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**Order Appointing Receiver.**

(Filed Feb. 20, 1928)

IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTERS RESTAURANT,  
a corporation,  
Defendant.

On Bill, &c.

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This matter being opened to the Court by Milton M. Unger, Esq., Solicitor for and of counsel with the complainant, Erwin Glaser, whereupon and upon reading and filing the bill of complaint and affidavit annexed thereto, and the court being satisfied of the sufficiency of the application made in this cause, and it appearing to the Court that the said defendant is unable to meet its current obligations or to continue its business with safety to the public or advantage to its stockholders and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, and that a receiver for the said defendant company should be appointed by this court to take charge of and discover all of its assets and property, in accordance with the statute,

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It is, thereupon, on this 20th day of February, 1928, ordered, adjudged and decreed as follows:

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*Order Appointing Receiver.*

1. That Harry G. Hendricks of South Orange, New Jersey, be and he is hereby appointed Receiver of Achtel-Stetters Restaurant, the defendant corporation, and of all its assets and property of every character and description wheresoever situate, with full power and authority to demand, sue for, collect, receive and take into his possession all of the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to said Achtel-Stetters Restaurant, or to which it may be entitled, and to sell and convey for the benefit of the creditors and stockholders any or all of the real and personal estate of said corporation, and to do and perform all of the duties imposed upon him and required by law and especially of an act entitled "An Act concerning Corporations (Revision of 1896)" and acts supplementary thereto and amendatory thereof.

2. That said Receiver before entering upon the discharge of his duties shall take the oath of office prescribed by law and shall enter into bond to the Chancellor of the State of New Jersey, with one or more surety or sureties, in the penal sum of Five thousand Dollars, conditioned for the faithful performance of his duties, which said bond shall be approved as to form and security thereof by Roy F. Anthony, one of the special masters of this Court.

3. That the said Receiver do take possession of all of the property and assets of the said defendant corporation and account for the same as this court



*Order Appointing Receiver.*

shall hereafter direct, and that said defendant corporations, its officers, directors, and agents, shall forthwith assign, transfer, convey and deliver to said Receiver all of the property and assets of the said corporation, both real and personal, wheresoever situate and of whatsoever it may consist.

4. That the said defendant corporation, its officers and agents and all persons claiming under them, be and they are hereby enjoined and restrained from exercising any of its privileges and franchises and from collecting or receiving any debts or paying out, selling or transferring any of its estate, money, funds, lands, tenements or effects except to said receiver appointed by this court until this court shall otherwise order, also restraining them, and especially the creditors of said defendant corporation, from interfering with said Receiver's taking possession of and management of said property. 10 20

5. That the creditors and stockholders of the said Achtel-Stetters Restaurant do show cause, if any they have, before the Chancellor at the Chancery Chambers, Industrial Office Buildings, 1060 Broad Street, Newark, New Jersey, on the 28th day of February, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the Receiver hereby appointed should not be discharged or why another receiver should not be appointed in his place. 30

6. That the said Receiver shall within three days from the date hereof mail to each of the creditors and stockholders of the defendant corporation at 40



*Order Appointing Receiver.*

his last known postoffice address a true copy of this order which copy need not be certified.

E. R. WALKER,  
C.

10      Respectfully advised,  
         ALONZO CHURCH,  
                 V. C.

A true copy,  
THOMAS BARBER,  
Clerk.

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**Order Appointing Receiver.**

(Filed February 28, 1928.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTER'S RESTAURANT,  
a corporation,  
Defendant.

On Bill, &amp;c. 10

This matter being opened to the Court by Milton M. Unger, of counsel with complainant, and it appearing that an order was made in the above entitled cause on the 20th day of February, A. D. 1928, appointing Harry G. Hendricks, of South Orange, New Jersey, Receiver of the above named defendant company, and an order to show cause, having been made at the same time why the said Receiver herein should not be discharged or why another receiver should not be appointed in this place, and said order being returnable before this Court at the Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, N. J., on February 28, 1928, at 10 A. M., and due proof being made of the mailing of said notice as in said Order provided, and it appearing from the allegations of the bill that the defendant company has become insolvent, and is unable to pay its debts as they fall due in the usual course of business, and has suspended its ordinary business, and is not about to resume its business and that it cannot continue its business with safety to the public and ad-

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*Order Appointing Receiver.*

vantage to its stockholders, and that its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its stockholders and creditors, and no one appearing in opposition to the continuance of said Receiver, and no cause or reason appearing to the contrary,

- 10 It is, thereupon, on motion of Milton M. Unger, solicitor of complainant, on this 28th day of February, A. D. 1928, ordered, adjudged and decreed, that the said defendant company is insolvent, and that the business of the said defendant has been and is being conducted at a great loss and prejudicial to the interest of its creditors and stockholders, and that its business cannot be conducted with safety to the public and advantage to the  
20 stockholders within the meaning of the Laws of the State of New Jersey,

- And it is further ordered, adjudged and decreed, that said order to show cause be and the same is hereby made absolute, and that Harry G. Hendricks be hereby appointed and continued as Receiver for the creditors and stockholders of the said defendant corporation, and that the said Receiver is hereby vested and granted all of the power  
30 and authority conferred upon Receiver of corporations under and by virtue of Section 66 of an Act entitled, "An Act concerning corporations" (Revision of 1896) approved April 21, 1896, and the said receiver shall give a bond to the Chancellor of the State of New Jersey in the sum of \$5000 to be approved as to form and sufficiency by Roy F. Anthony, a special master of this Court.

- 40 And it is further ordered, that the said defendant corporation and the officers and agents are



*Order Appointing Receiver.*

hereby enjoined and restrained from exercising its privileges and franchises and from collecting or receiving any debt or paying out, selling, assigning or transferring any of its estate, monies, funds, lands and tenements or effects except to said Receiver.

E. R. WALKER,  
C. 10

Respectfully advised,  
ALONZO CHURCH,  
V. C.

A true copy,  
THOMAS BARBER,  
Clerk.

R.S. 2.28.28 20

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**Order.**

(Filed April 4, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                         |                |
|----|-------------------------------------------------------------------------------------------------------------------------|----------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHTEL-STETTER'S RESTAURANT,<br>a corporation,<br>Defendant. | } On Bill, &c. |
|----|-------------------------------------------------------------------------------------------------------------------------|----------------|

20 This matter being opened to the court by Henry Pomerehne, Solicitor of the Receiver, and it appearing to the Court that the Receiver gave notice to all the creditors of the above named defendant corporation that he would sell at public auction to the highest bidder, at the office of Pomerehne, Laible and Kautz, 45 Branford Place, Newark, N. J., on April 2nd, 1928, at 10 A.M., leases held by the defendant corporation and covering:—1. Nos. 838-840 Broad St., Newark, N. J., 2. No. 842 Broad Street, and 3, #844 Broad Street, Newark, N. J. 4. No. 846 Broad Street, Newark, N. J., and it appearing by the Petition and Report of the said Receiver that notice of said sale was also published in various newspapers, and that said leases were offered in bulk and no bid was received therefor, and that the same were then offered separately and that Greenfield Auction Company, Inc., offered the sum of \$1000. for the lease on 846 Broad Street, Newark, N. J., and said offer being the highest and best bid and due notice having been given of an application to confirm said sale before the Chan-



*Order.*

cellor, at the Chancery Chambers, 1060 Broad Street, Newark, N. J., on April 3rd, 1928, at 10 A. M., and the matter coming on to be heard, and the Court having heard and considered the same and being of the opinion that it is for the best interests of the said estate that said offer of Greenfield Auction Company, Inc., be accepted.

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It is on this 4th day of April, 1928, ordered that the sale of the lease covering #846 Broad Street, Newark, N. J., to Greenfield Auction Company, Inc., be and the same hereby is confirmed, and the receiver is hereby authorized and empowered to execute a good and sufficient instrument of transfer for the right, title and interest of the receiver in said lease, upon receipt of the consideration therefor.

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And it is further ordered, that the said Receiver be and he is hereby authorized and empowered to abandon the remainder of said leases and to deliver immediate possession to the owner or owners of said premises.

E. R. WALKER,  
C.

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Respectfully advised,  
ALONZO CHURCH,  
V. C.

A true copy,  
THOMAS BARBER,  
Clerk.

R.S. 3.3.28

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**Petition.**

(Filed April 7, 1928.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

10

and

ACHTEL-STETTERS RESTAURANT,  
a corporation,  
Defendant.

On Bill, &amp;c.

TO THE HONORABLE EDWIN ROBERT WALKER, CHAN-  
CELLOR OF THE STATE OF NEW JERSEY.

20 The petitioners, Junior Company and Senior Corporation, corporations of New Jersey, having its principal offices at No. 763 Broad Street, in the City of Newark respectfully show that:

1. The petitioner, Junior Company, is the owner of certain premises known as Nos. 844 and 846 Broad Street, Newark, New Jersey, and the petitioner, Senior Corporation is the owner of premises known as No. 842 Broad Street, Newark, New  
30 Jersey.

2. By virtue of a lease made on the 1st day of November, 1914, between the petitioner, Junior Company and Ludwig Achtel Stetter, Inc., formerly a corporation of the State of New Jersey, this petitioner leased to Ludwig Achtel Stetter, Inc., premises known as No. 844 Broad Street aforesaid, for a term to years, to commence on the 1st day of November, 1914; and on the 1st day of  
40 June, 1919, this petitioner leased to Ludwig Achtel Stetter, Inc., premises known as No. 846 Broad



*Petition.*

Street, aforesaid, for a term of years, to commence on the 1st day of June, 1919; which leases were, on the 31st day of January, 1921, extended so that said leases would expire on the 31st day of January, 1941.

3. By virtue of a lease made on the 1st day of November, 1915, between the petitioner, Senior Corporation and Ludwig Achtel Stetter, Inc., formerly a corporation of the State of New Jersey, this petitioner leased to Ludwig Achtel Stetter, Inc., premises known as No. 842 Broad Street aforesaid, and for a term of years, to commence on the 1st day of November, 1915; which lease was, on the 31st day of January, 1921, extended so that said lease would expire on the 1st day of January, 1941. 10

4. Said leases referred to in paragraphs two and three were acquired by Achtel Stettters Restaurant, a corporation, through mesne purchases on or about the 14th day of May, 1927. 20

5. Achtel Stettters Restaurant entered into possession of the demised premises under said leases and had up to February 20th, 1928, used and occupied said premises subject to the terms and provisions of said leases; one of the provisions contained in each lease provides that "it is agreed that if any default shall be made in any of the payments provided for in the foregoing clause, then it shall be lawful for the party of the first part to re-enter the said premises and to remove all persons therefrom." 30

6. On February 20th, 1928, there was due and owing to the petitioner, Junior Company, from the said Achtel Stetter's Restaurant, the sum of Three Thousand and Sixty-five Dollars and Sixty-six 40



*Petition.*

cents (\$3065.66) on premises No. 844 Broad Street, Newark, New Jersey, and the sum of One Thousand Seven Hundred and Eight Dollars and Twenty cents (\$1708.20) on premises No. 846 Broad Street, Newark, New Jersey, being unpaid rent for the period of the said two months; and on the said day there was due and owing to the petitioner, Senior Corporation, from the said Achtel Stetters Restaurant the sum of Three Thousand Six Hundred and Thirty-five Dollars and Seventy-four cents (\$3635.74), being unpaid rent for the period of the same two months.

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20 7. On Monday, February 20th, 1928, at nine o'clock in the forenoon, petitioners through their bailiff, Harold M. Blanchard, Esquire, served a notice of distress for rent upon Achtel Stetters Restaurant and distrained upon the personal property in said premises for the rents due the petitioners.

30 8. Subsequently on the said day, and upon the complaint of Erwin Glaser, a creditor of Achtel Stetters Restaurant, Harry G. Hendricks, Esquire, was appointed Receiver for the aforementioned Achtel Stetters Restaurant by this Honorable Court on application to Vice Chancellor Church, and the said Receiver did take over and assume control and possession of all the assets of the said Achtel Stetters Restaurant, pursuant to the order of his appointment.

40 9. On February 25th, 1928, your petitioners did present to Vice Chancellor Church similar but separate verified Petitions praying for rules to show cause why the Receiver should not turn over and surrender to them full title and possession to the premises and leases thereon and why your petitioners should not be permitted to complete and perfect the distress levied by them on the said premises;



*Petition.*

that the Petitions presented by your petitioners were denied consideration and the rules to show cause were denied.

10. On February 28th, 1928, upon the return of the rule of the Receiver to show cause why the Receiver should not sell the goods and chattels located upon the premises herein referred to, your petitioners appeared and objected to such a sale by the Receiver on the ground that same was an unnecessary and unwarrantable expense and would cause an unreasonable depreciation in the value of the security for your petitioners' distress lien. Your petitioners also presented to the Court similar but separate verified Petitions praying for rules to show cause why the landlords, your petitioners, should not be permitted to sell the goods and chattels and merchandise in the premises herein referred to in order to satisfy the lien of their distress; your petitioners' application was denied without consideration and without your petitioners' representative being given an opportunity to argue in support of your petitioners' application. The Receiver was granted an Order to sell the goods herein referred to, the lien of your petitioners, if any, to attach to the proceeds of such sale.

11. On February 29th, 1928, the Receiver denied and refused to your petitioners the right and opportunity to appraise the goods upon which their distress had been levied, and subsequently thereto, the Receiver did offer for sale and did sell all the goods, chattels and merchandise held by him and being the same goods, chattels and merchandise so distrained upon by your petitioners; and thereafter said sale was confirmed without prior notice of such confirmation.



*Petition.*

12. Since February 20th, 1928, and at all times subsequent thereto up to and including April 5th, 1928, the Receiver has been in possession of the premises hereinabove referred to and has paid no rent whatsoever nor made any offer to pay same. That on March 1st, 1928, your petitioners served notice on the Receiver to quit the premises then occupied by him at Nos. 842, 844 and 846 Broad Street, Newark, New Jersey, by reason of the termination of the leases upon said premises prior to the appointment of the Receiver through the failure of Achtel Stetters Restaurant to pay the rent therefor and by reason of the further failure of the Receiver to assume said leases or pay any rent for same and by further reason of the Receiver's lack of assets and inability to pay any rent arising out of said premises either before or after the appointment of the Receiver. Thereafter Milton Unger, Esquire, solicitor for the petitioning creditor, asked your petitioners to waive their claim for rent against the Receiver for his use and occupation and to permit the Receiver to sell the leases upon the said premises; and your petitioners did refuse, in writing, to grant such permission either to Milton Unger, Esquire, or to the Receiver, denying to the Receiver any right or title in said leases.

13. On April 1st, 1928, there was due and owing to your petitioner, Junior Company, from the Receiver, on account of the use and occupation by him of the premises No. 844 Broad Street, Newark, New Jersey, the sum of Nine Hundred Seventy-three Dollars Seventy-six cents (\$973.76); for premises No. 846 Broad Street aforesaid, the sum of One Thousand Forty-five Dollars thirty-one cents (\$1045.31); and to the petitioner, Senior Corpora-



*Petition.*

tion, for the premises No. 842 Broad Street, Newark, New Jersey, the sum of Two Thousand six Dollars thirty-three cents (\$2006.33) for rent.

14. On or about the 28th day of March, 1928, your petitioners were informed that the Receiver had offered for sale at public auction the leases of all the premises herein referred to, and on March 29th, 1928, your petitioners presented separate but similar verified Petitions praying for rules to show cause why full right, title and possession to the said premises and the leases thereon should not be returned to them, and why the Receiver should not be restrained from selling said leases on April 2nd, 1928; the application of your petitioners for a rule for such restraint was denied in both particulars, and at the same time Vice Chancellor Church refused to direct that the amount of the Receiver's Bond be increased to an amount commensurate with the possible liabilities and losses which your petitioners might sustain by reason of the continuance of the opposed possession by the Receiver.

15. On April 2nd, 1928, the leases on said premises were offered for sale at public auction, both in bulk and by lot, and the Receiver was able to secure but one bid, that of One Thousand Dollars (\$1,000.) for the lease on No. 846 Broad Street, aforesaid, from the Greenfield Auction Company.

16. On April 3rd, 1928, the sale of the lease of No. 846 Broad Street, Newark, to Greenfield Auction Company was brought on for confirmation; Mr. Milton Unger, solicitor for the petitioning creditor requested confirmation on behalf of the Receiver, and such confirmation was granted over the objection of your petitioners herein. Your petitioners were informed that the Order confirming the sale was entered on the 5th day of April, 1928,



*Petition.*

on application by the solicitor for the complainant in this action, after the application by the solicitor for the Receiver seeking to abandon all the leases had been denied by the Vice Chancellor. Your petitioners are further informed that said Order was entered confirming the sale only of the Receiver's right, title and interest in premises No. 846 Broad Street, Newark, and specifically abandoning all claims by the Receiver to any right, title or interest in or to the premises Nos. 838, 840, 842 and 844 Broad Street, Newark, or the leases thereon.

17. On April 5th, 1928, the same day upon which the Order confirming the sale was signed, at twelve o'clock noon, the Greenfield Auction Company had entered premises No. 844 Broad Street, aforesaid, by means of keys to said premises given to them by Milton Unger, Esquire, solicitor for the complainant herein, and had proceeded to demolish and destroy the interior of No. 846 Broad Street, having willfully wrecked, destroyed, demolished and removed the front wall to the ground floor of said premises together with various partitions, walls and other parts of the interior structure of said building; in addition thereto, the said Greenfield Auction Company, by its agents and servants, had seriously damaged and injured the property of your petitioners at No. 844 Broad Street, Newark, having piled building materials, wreckage, refuse and other matters in and upon the floors, stairways and other portions of said premises. The action of the said Greenfield Auction Company was without justification and entirely unlawful by reason of the fact that no title to said premises ever passed to said Greenfield Auction Company under the Receiver's sale and by further reason of the fact that under the terms of the lease so purported to have



*Petition.*

been sold, no right to repair, alter or demolish said premises so demised resides in the lessee or any one holding any privity with said lessee.

18. Your petitioners are seriously, permanently and irreparably injured as a result of the sale of the lease of the premises No. 846 Broad Street, Newark, and the resultant action of the purchaser of said lease, Greenfield Auction Company; the premises Nos. 844 and 846 Broad Street, Newark, are so constructed and designed as to be inseparable and for a single common use; by reason of the action of the Greenfield Auction Company in demolishing and wrecking the interior of premises No. 846 Broad Street, the interior of premises No. 844 Broad Street is open and exposed to the elements and without protection and safeguard and is entirely unfit for rental purposes; in addition thereto, the freehold to premises No. 846 Broad Street is being seriously and permanently damaged and wasted; your petitioners are without adequate means of redress for the injury inflicted upon them; to the best of your petitioners' knowledge the Greenfield Auction Company is without responsibility to meet its liability for its actions in the premises; the Bond of the Receiver is entirely inadequate to recompense your petitioners for the injuries done your petitioners, both by the action of the Receiver and by other persons:

WHEREFORE, your petitioners pray that the Receiver and the Greenfield Auction Company may answer each and every allegation contained in this Petition;

2. That a Rule may be granted directing the Receiver and the said Greenfield Auction Company to show cause why the sale of the lease to premises



*Petition.*

No. 846 Broad Street, Newark, New Jersey, should not be set aside and said lease returned to your petitioners, and why the Order confirming the sale should not be amended to include the abandonment of the premises No. 846 Broad Street, Newark, New Jersey;

- 10      3. Why a Rule should not be granted directing the Receiver to turn over to your petitioners the proceeds of the sale of the chattels heretofore distrained upon by your petitioners ;

4. That the Receiver may be directed to increase the amount of his Bond in a sum commensurate with the possible damages sustainable by your petitioners by reason of the action of said Receiver;

- 20 5. That an Order of Restraint may be granted directing and ordering the Receiver and the said Greenfield Auction Company to immediately cease and desist from any and all wrecking, demolishing and building on any of the premises herein referred to pending the return of the rule to show cause;

6. That the said Greenfield Auction Company may be ordered and directed to immediately restore, repair and make the premises at No. 846 Broad Street, Newark, New Jersey, into the same condition in which the said premises were at the time immediately prior to the purchase of the lease to said premises by the said Greenfield Auction Company.

7. And for such other and further relief as the Court may deem fit and proper.

And your petitioners will ever pray, &c.

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BLANCHARD & CAREY,  
Solicitors for and of Counsel  
with Petitioners.



**Affidavit of Ernest F. Keer, Annexed to  
Petition.**

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

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

I am President of the Junior Company and Senior Corporation, corporations of the State of New Jersey, the petitioners in the foregoing petition mentioned, and am authorized to make this affidavit on behalf of the said corporations. I have read the petition aforesaid and am familiar with the contents thereof, and the matters therein set forth are true, to the best of my knowledge and belief. 10

The Junior Company, by a written lease dated November 1, 1914, leased the premises known as No. 844 Broad Street, Newark, New Jersey, to Ludwig Achtelstetter, a corporation; and by a written lease dated June 1, 1919, leased the premises known as No. 846 Broad Street, Newark, New Jersey, to Ludwig Achtelstetter, a corporation; which leases were subsequently sold to Chris Mentze by the Receiver, and on the 14th day of May, 1927, the said Chris Mentze sold said leases to Achtel Stetter's Restaurant, the present tenant. 20

The Senior Corporation, by a written lease dated November 1, 1915, leased the premises known as No. 842 Broad Street, Newark, New Jersey, to Ludwig Achtelstetter, a corporation; which lease was subsequently sold to Chris Mentze by the Receiver, and on the 14th day of May, 1927, the said Chris Mentze sold said lease to Achtel Stetter's Restaurant, the present tenant. 30

Achtel Stetter's Restaurant now owes to the petitioner, the Junior Company, and has not paid the rent for more than two months, to wit, the rent for 40



*Affidavit of Ernest F. Keer.*

January and February, 1928, amounting to \$3065.66 on premises No. 844 Broad Street, and \$1708.20 on premises No. 846 Broad Street, nor has it paid the same nor any part thereof despite the repeated requests of the petitioner's agents.

10 Achtel Stetter's Restaurant now owes to the petitioner, Senior Corporation, and has not paid the rent for more than two months, to wit, the rent for January and February, 1928, amounting to \$3635.74 on premises 842 Broad Street, nor has it paid the same nor any part thereof despite the repeated requests of the petitioner's agents.

20 On February 20th, 1928, Harold M. Blanchard under my authority and direction, as President of the Junior Company and Senior Corporation, made a levy and distress upon all the goods and chattels of the defendant corporation herein.

30 A Receiver was appointed for Achtel Stetter's Restaurant on February 20, 1928, at a later hour in the day than the time when the distress was levied, upon the complaint of Erwin Glaser, a creditor of Achtel Stetter's Restaurant, Harry G. Hendricks being appointed Receiver who took immediate possession of the premises. Notice of his appointment was served upon me as President of the Junior Company and Senior Corporation by the Receiver, who refused to allow my representative to sell under the distress levied upon the property. The Receiver himself sold all the assets consisting of goods, merchandise, fixtures, and other property of the insolvent Corporation in pursuance of a Court Order, after your petitioners' objection had been duly entered, and I am informed he realized approximately Fifty-two Hundred Dollars (\$5200.) upon this sale. Since the Receiver went into possession of Achtel Stetter's Restaurant, neither the

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*Affidavit of Ernest F. Keer.*

Junior Company nor the Senior Corporation has received rent in any amount whatsoever from the Receiver for the use and occupation of the premises during the Receiver's possession. There is due and owing to the Junior Company from the Receiver for use and occupation up to April, 1928, the amount of \$2019.07; and upon the first day of April, 1928, there was due and owing an additional month's rent in the amount of \$2412.39, the Receiver contending that he occupies the premises under the leases herein referred to. This would leave an indebtedness of \$4431.46 owing from the Receiver to the Junior Company, in addition to the indebtedness of \$4773.86 owing from Achtel Stetter's Restaurant for the period prior to the Receivership. 10

There is due and owing to the Senior Corporation from the Receiver for the use and occupation of premises No. 842 Broad Street up to April 1, 1928, the amount of \$2006.33, and upon the first day of April, 1928, there was due and owing an additional month's rent in the amount of \$1832.37, the Receiver contending that he occupies the premises under the lease herein referred to. This would leave an indebtedness of \$3838.70 owing from the Receiver to the Senior Corporation, in addition to the indebtedness of \$3635.74 owing from Achtel Stetter's Restaurant for the period prior to the Receivership. 20 30

I have recieved a copy of an order directing the Receiver to abandon and surrender up to the petitioners the premises 838, 840, 842 and 844 Broad Street, Newark, New Jersey, and confirming the sale by the Receiver of the lease on 846 Broad Street to Greenfield Auction Company. The sale of this lease was effected at a public sale April 40



*Affidavit of Ernest F. Keer.*

2, 1928, in the office of Pomerehne, Laible & Kautz when no bids were received on any of the leases other than said 846 Broad Street, after all the leases were offered by the Receiver for sale to the bidders then there present.

10     The Junior Company and Senior Corporation have always maintained that all the leases were voided by non-payment of rent by the tenant, and that the petitioners had the right to re-enter under the term of the leases.

20     Representatives of the Junior Company and Senior Corporation, by my instruction, levied notice on the Receiver on March 1, 1928, to quit said premises, but the Receiver refused to do so. Thereafter, Milton Unger, attorney for the complainant, but speaking for the Receiver, asked me, as President of the petitioning corporations, to waive the rent for the period of one month, and to permit the sale of said leases. I immediately informed him in writing that we would decline to waive such rent for the month as requested, and that we claimed right to immediate possession of said premises; and thereafter, instructed by attorneys to apply for an Order to the Court of Chancery, restraining said Receiver from selling said leases and to abandon the same, which order, I am informed and believe, was denied. On April 5, 1928, over 30     the objection of my attorneys, an order was entered confirming the sale of the lease covering 846 Broad Street to the Greenfield Auction Company; and on the same day, the purchaser entered on both 844 and 846 Broad Street, Mr. Unger admitting to me that he gave the purchaser the keys to said 844 Broad Street.

40     The purchaser immediately proceeded to tear down walls and partitions, and in various ways alter, destroy and demolish the premises.



*Affidavit of Ernest F. Keer.*

The premises consist of 838, 840, 842, 844 and 846 Broad Street, Newark, New Jersey, and are three-story brick buildings. All of the premises were formerly used for restaurant purposes except for the ground floor of 838-840 and the construction and arrangements were designed for such use. The sale of premises 846 Broad Street to Greenfield Auction Company and its action in altering same, seriously damages the value of the remainder, both by reason of its lessened adaptability of the remainder for purposes for which they were designed, as well as by the exposure of the interior from the demolition and destruction of the walls and partitions of 846 Broad Street. Although there are four distinct leases upon these properties, the buildings were arranged and constructed for use as a whole by one company, and the properties themselves are inseparable.

10

20

ERNEST F. KEER.

Sworn and subscribed to before }  
me this 7th day of April, 1928 }

CASIMIRO SCOPPOTTONE,  
Master in Chancery of New Jersey.

30

A true copy,  
FERD GARRETSON,  
Clerk.

40



**Order to Show Cause.**

(Filed April 7, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                         |                |
|----|-------------------------------------------------------------------------------------------------------------------------|----------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHTEL STETTER'S RESTAURANT, a<br>corporation,<br>Defendant. | } On Bill, &c. |
|----|-------------------------------------------------------------------------------------------------------------------------|----------------|

20 This matter being opened to the Court by  
 Blanchard & Carey, Esquires, solicitors for the pe-  
 tioners herein; and it appearing that the peti-  
 tioner, Junior Company, owns premises Nos. 844  
 and 846 Broad Street, Newark, New Jersey, and  
 the petitioner, Senior Corporation, owns premises  
 No. 842 Broad Street, Newark, New Jersey; and it  
 further appearing that Achtel Stetter's Restaurant  
 were the lessees of said premises on February 20th,  
 1928; and it further appearing that Harry G. Hen-  
 dricks, Esquire, was appointed Receiver of said  
 Achtel Stettters Restaurant pursuant to a Bill of  
 30 Complaint filed by Erwin Glaser; and it appearing  
 that prior to the appointment of said Receiver, the  
 petitioners herein levied a distress upon the goods  
 and chattels in said premises; and it appearing  
 that the said Receiver did sell said goods and chat-  
 tels so distrained upon, under order of this Court,  
 over the objection of the petitioners, the lien of  
 such distress to attach to the proceeds of said sale;  
 and it appearing further that the said Receiver did  
 40 sell the lease of the premises No. 846 Broad Street,



*Order to Show Cause.*

Newark, New Jersey, to Greenfield Auction Company over the objection of the petitioners herein; and it further appearing that the said Greenfield Auction Company is engaged in demolishing, destroying and altering the said premises, to the injury of the petitioners' right, title and interest in and to the premises at Nos. 844 and 846 Broad Street, Newark; and it appearing that the injury to the petitioners is of an irreparable, serious and permanent character; 10

It is, on this 7th day of April, A. D. 1928, ordered that Harry G. Hendricks, Esquire, the Receiver, and Greenfield Auction Company appear and show cause on the 17th day of April, 1928, at the hour of ten o'clock in the forenoon, at the Chancery Chambers in Newark, why the prayer of said petition should not be granted, and the said Receiver and Greenfield Auction Company should not be directed and ordered to abandon, turn over and deliver up to the petitioners herein, all right, title and interest and possession of the premises No. 846 Broad Street, Newark, New Jersey; and restore the same to their former condition; and why the said Receiver should not turn over to the petitioners all moneys received and retained by him on the sale of the goods, chattels and merchandise distrained upon by the said petitioners; 20 30

And it is further Ordered that the Greenfield Auction Company cease and desist forthwith from any demolition, destruction, alteration or operation of any kind whatsoever upon said premises pending further order of this Court;

And it is further Ordered that true but uncertified copies of this order, together with true but 40



*Order to Show Cause.*

uncertified copies of the petition and affidavits on which the same is based, be served on the said Harry G. Hendricks, Receiver, and the said Greenfield Auction Company, or their solicitors, within three days after the date hereof.

E. R. WALKER,  
C.

10

A true copy,  
THOMAS BARBER,  
Clerk.

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30

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**Petition.**

(Filed Aug. 29, 1928.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTER'S RESTAURANT, a  
corporation, &c.,  
Defendant.

On Bill, &amp;c.

10

The petitioners, Junior Company and Senior Corporation, corporations of the State of New Jersey, having their principal offices at No. 763 Broad Street, in the City of Newark, County of Essex and State of New Jersey, respectfully show that:

20

1. The petitioner, Junior Company, is the lessee of premises known and designated as No. 838 and 840 Broad Street, Newark, New Jersey, under and by virtue of a certain lease bearing date June 16, 1919, said lease being with the Central Railroad Company of New Jersey, a corporation of New Jersey.

30

2. The said Junior Company, under and by virtue of the aforesaid lease did on October 1, 1919, sublet said premises 838 and 840 Broad Street to Ludwig Achtel Stetter, Inc., formerly a corporation of the State of New Jersey, under lease dated October 1, 1919 for a period of twenty-one years from the date thereof.

40



*Petition.*

10       3. The said Junior Company is the owner of premises known and designated as 844 Broad Street, Newark, New Jersey, and as such owner leased said premises on the Eleventh day of November, 1914 to Ludwig Achtel Stetter, Inc., formerly a corporation of the State of New Jersey, for a term of years to commence on the first day of November, 1914, which lease was on the 31st day of January, 1921, extended so that said lease would expire on the 31st day of January, 1941.

20       4. The petitioner, Senior Corporation, is the owner of premises known and designated as 842 Broad Street, Newark, New Jersey, and as such owner leased said premises on the First day of November, 1915 to Ludwig Achtel Stetter, Inc., formerly a corporation of the State of New Jersey, for a term of years to commence on the First day of November, 1915, which lease was on the 31st day of January, 1921 extended so that said lease would expire on the 31st day of January, 1941.

30       5. Said leases referred to in paragraphs 2, 3 and 4 were acquired by Achtel Stetter's Restaurant, a corporation of New Jersey, through mesne purchases on or about the 14th day of May, 1927.

40       6. Achtel Stetter's Restaurant entered into possession of the demised premises under said leases and had up to February 20, 1928 used and occupied said premises subject to the terms and provisions of said leases; one of the provisions contained in each lease provides that "it is agreed that if any default shall be made in any of the payments provided for in the foregoing clause, then it shall be lawful for the party of the first part to re-enter the said premises and to remove all persons therefrom."



*Petition.*

7. On February 20, 1928 there was due and owing to the petitioner, Junior Company, from the said Achtel Stetter's Restaurant, the sum of \$1083.32 on premises 838 and 840 Broad Street, Newark, New Jersey, being unpaid rent for the period of two months.

8. On February 20, 1928 there was due and owing to the petitioner, Junior Company, from the said Achtel Stetter's Restaurant, the sum of \$3065.66 on premises 844 Broad Street, Newark, New Jersey, being unpaid rent for the period of two months. 10

9. On February 20, 1928 there was due and owing to the petitioner, Senior Corporation, from the said Achtel-Stetter's Restaurant, the sum of \$3635.74 on premises 842 Broad Street, Newark, New Jersey, being unpaid rent for the period of two months. 20

10. On Monday, February 20, 1928 at nine o'clock in the forenoon, your petitioners, through their bailiff, Harold M. Blanchard, Esquire, served a notice of distress for rent upon said Achtel Stetter's Restaurant and distrained upon the personal property on premises 842 and 844 Broad Street, Newark, New Jersey, for the rents due on said premises to your petitioners. 30

11. Subsequently on the said day, and upon the Complaint of Erwin Glaser, a creditor of Achtel Stetter's Restaurant, Harry G. Hendricks, Esquire, was appointed Receiver for the aforementioned Achtel Stetter's Restaurant by this Honorable Court on application to Vice Chancellor Church, and the said Receiver did take over and assume control and pos- 40



*Petition.*

session of all the assets of the said Achtel-Stetter's Restaurant, pursuant to the order of his appointment.

10 12. On February 25, 1928, your petitioner did present to Vice-Chancellor Church similar but separate verified petitions praying for rules to show cause why the Receiver should not be permitted to complete and perfect the distress levied by them on premises 842 and 844 Broad Street, Newark, New Jersey; that the petitions presented by your petitioners were denied consideration and the issuance of rules to show cause were denied.

20 13. On February 28, 1928, upon the return of the rule of the Receiver to show cause why the Receiver should not sell the goods and chattels located upon the premises hereinbefore referred to, your petitioners appeared and objected to such a sale by the Receiver on the ground that same was an unnecessary and unwarrantable expense, would cause an unreasonable depreciation in the value of the security for your petitioners' distress lien, and was an illegal sale by the Receiver. Your petitioners also presented to the Court similar but separate  
30 verified Petitions praying for rules to show cause why your Petitioners should not be permitted to sell the goods, chattels and merchandise in the premises herein referred to in order to satisfy the lien of their distress; your petitioners' application was denied without consideration and without your petitioners' representative being given an opportunity to argue in support of your petitioners' application. The Receiver was granted an order to sell the chattels and goods herein referred to, the  
40 lien of your petitioners, to attach to the proceeds of such sale.



*Petition.*

14. On February 29, 1928, the Receiver denied and refused to your petitioners the right and opportunity to appraise the goods upon which their distress had been levied, and subsequently thereto, the Receiver did offer for sale and did sell all the goods, chattels and merchandise held by him and being the same goods, chattels and merchandise so distrained upon by your petitioners, for the sum of \$5300. and thereafter said sale was confirmed without prior notice of such confirmation. 10

15. Your petitioners further allege that said Receiver, in addition to the chattels, goods and merchandise on said premises, did sell and caused to be removed therefrom and destroyed certain fixtures attached to and being part of the freehold and owned and belonging to your petitioners, said fixtures consisting of a large heating plant, partitions, wainscoting and panelling, lighting fixtures, ice freezing machine, etc. to the damage of your petitioners in the amount of \$10,000. 20

16. On February 29, 1928, your petitioners, through Theo J. Conliss, a constable of Essex County, caused to be served upon said Receiver a notice to forthwith vacate and quit and to forthwith deliver up possession of the aforementioned premises to the Junior Company and Senior Corporation under and by virtue of the provisions contained in said leases as set forth in paragraph six of this petition. 30

17. Since February 20, 1928 and at all times subsequent thereto, up to and including April 5, 1928, the Receiver has been in possession of the premises hereinabove referred to and has paid no rent what- 40



*Petition.*

soever nor made any offer to pay same. That on March 1, 1928 your petitioners served notice on the Receiver to quit the premises then occupied by him at 838, 840, 842 and 844 Broad Street, Newark, New Jersey, by reason of the termination of the leases upon said premises prior to the appointment of the Receiver through the failure of Achtel Stetter's Restaurant to pay the rent therefor and by reason of the failure of said Receiver to pay any rent for same, and further by reason of the Receiver's lack of assets and inability to pay any rent arising out of said premises, either before or after the appointment of said Receiver. Thereafter Milton Unger, Esquire, Solicitor for the petitioning creditor, asked your petitioners to waive their claim for rent against the Receiver for his use and occupation of said described premises and to permit the Receiver to sell said leases, and your petitioners did refuse in writing, to waive any rent due from the Receiver and did refuse to grant such permission, either to Milton Unger, Esquire or to the Receiver, denying to the Receiver any right or title in said leases or any legal or equitable right in said Receiver to sell said leases.

18. On or about the 28th day of March, 1928, your petitioners were informed that said Receiver had offered for sale at public auction the leases of all the above described premises and on the 29th day of March, 1928, your petitioners presented separate but similar verified petitions praying for rules to show cause why full right, title and possession to said premises and the leases thereon should not be returned to your petitioners and why said Receiver should not be restrained from selling or attempting to sell said leases. The application of your peti-



*Petition.*

tioners for a rule and for such restrain was denied in both particulars and at the same time Vice Chancellor Church refused to direct, upon application of your petitioners, that the amount of the Receiver's bond be increased to an amount commensurate with the possible liabilities and losses which your petitioners might sustain by reason of the unwarrantable and illegal continuance in possession of said premises by said Receiver. 10

19. On April 2, 1928, in utter disregard of the rights of your petitioners, all of the leases on said premises were offered for sale at public auction, both in bulk and by lot, and said Receiver was unable to secure a bid for any of the aforementioned leases.

20. Your petitioners are further informed that on April 5, 1928 an Order was entered specifically abandoning all claims by said Receiver to any right, title or interest in or to the premises, 838, 840, 842 and 844 Broad Street, Newark, New Jersey, or to the leases thereon. 20

21. The petitioner, Junior Company, is the owner of premises 846 Broad Street, Newark, New Jersey, and on the First day of June 1919 leased said premises to Ludwig Achtel Stetter, Inc. for a term of years commencing from said date, which lease was on the 31st day of January 1921 extended so that said lease would expire on the 31st day of January, 1941. Said lease was acquired by Achtel Stetter's Restaurant, a corporation, through mesne purchase on or about May 14, 1927. 30

22. Achtel Stetter's Restaurant entered into possession of the demised premises under said lease 40



*Petition.*

and had up to February 20, 1928 used and occupied said premises subject to the terms and provisions of said lease; one of the provisions contained in said lease being set forth in paragraph 6 of this petition.

10 23. On February 20, 1928 there was due and owing to your petitioner on said lease from Achtel Stetter's Restaurant the sum of \$1708.20 on premises 846 Broad Street Newark, New Jersey, being unpaid rent for the period of two months.

24. Your petitioner, Junior Company, repeats paragraphs 10, 11, 12, 13, 14, 15, 16, 17 and 18 and alleges that all the facts alleged in said paragraphs apply to the premises 846 Broad Street, Newark, New Jersey, and to the lease thereon.

20 25. On April 2, 1928, in utter disregard of the rights of your petitioner, Junior Company, said lease was offered for sale at public auction and said Receiver did sell said lease for the sum of \$1000. to the Greenfield Auction Co., a corporation of New Jersey. Said sale was confirmed upon the request of Milton Unger, Esquire, solicitor for the petitioning creditor, over the objection of your petitioner. Your petitioner is informed and verily believe that  
30 said sale was confirmed after the application by the solicitor for the Receiver, seeking to abandon all leases of your petitioners, had been denied by the Vice Chancellor. Your petitioner, Junior Company, is further informed and verily believes that said order was entered confirming the sale only of the Receiver's right, title and interest in premises 846 Broad Street, Newark, New Jersey.

40 26. Your petitioner, Junior Company, alleges that there is due and owing as rent for premises 838



*Petition.*

and 840 Broad Street, Newark, New Jersey, from said Harry G. Hendricks, Esquire, the sum of \$894.43 besides taxes, assessments, and other carrying charges as specified in said lease in the additional sum of \$894.90 for the period from February 20, 1928 to April 6, 1928.

Your petitioner, Junior Company, alleges that there is due and owing as rent for premises 844 Broad Street, Newark, New Jersey, from said Harry G. Hendricks, Esquire, the sum of \$1661.10, besides taxes, assessments and other carrying charges as specified in said lease in the additional sum of \$702.13 for the period from February 20, 1928 to April 6, 1928. 10

Your petitioner, Senior Corporation, alleges that there is due and owing as rent for premises 842 Broad Street, Newark, New Jersey from said Harry G. Hendricks, Esquire, the sum of \$2204.17, besides taxes, assessments and other carrying charges as specified in said lease in the additional sum of \$600.63 for the period from February 20, 1928 to April 6, 1928. 20

Your petitioner, Junior Company, alleges that there is due and owing as rent for premises 846 Broad Street, Newark, New Jersey, from said Harry G. Hendricks, Esquire, the sum of \$894.43 besides taxes, assessments, and other carrying charges as specified in said lease in the additional sum of \$432.84 for the period from February 20, 1928 to April 6, 1928. 30

27. Your petitioners have at diverse times, to wit: demanded said rent then due and owing from said Harry G. Hendricks, but all of said rent remains due and unpaid. 40



*Petition.*

28. Your petitioners further allege that said Receiver has in his possession the sum of \$5300. realized from the sale of the chattels and fixtures as above described upon which sum your petitioners have a lien for unpaid rent up to the date of sale by said Receiver; and that the Receiver has in his possession the additional sum of \$1000. received by him  
 10 for the sale of lease on premises 846 Broad Street, Newark, New Jersey, which premises are owned by the petitioner, Junior Company, being all the assets of Achtel Stetter's Restaurant.

29. Since April 5, 1928, said Receiver has failed and neglected to account or pay to your petitioners any of the rent due from said Receiver, although frequent demands have been made of him by your  
 20 petitioners to their injury.

30. Your petitioners further allege that in addition to the aforementioned rent due and owing, your petitioners, from the said Harry G. Hendricks, Esquire, for the period from February 20, 1928 to April 6, 1928, there is due and owing as unpaid rent on premises 838 and 840 Broad Street, Newark, New Jersey for the period of February 1, 1928 to February 20, 1928, under the aforementioned  
 30 lease, the sum of \$393.54; there is due and owing as unpaid rent on premises 842, 844 and 846 Broad Street, Newark, New Jersey, for the period of January 1, 1928 to February 20, 1928, under the aforementioned leases, the sums of \$3203.75, \$1984.87 and \$1600. respectively.

Wherefore your petitioners pray:

1. That Harry G. Hendricks, Esquire, may answer each and every allegation contained in this petition;  
 40



*Petition.*

2. That an Order may be granted directing Harry G. Hendricks, Esquire, to show cause why he should not be compelled to pay the petitioners the rents due and owing on premises No. 838, 840, 842, 844 and 846 Broad Street, Newark, New Jersey, up to and including April 6, 1928;

3. That an Order may be granted directing Harry G. Hendricks, Esquire, to show cause why he should not be compelled to turn over to your petitioners the proceeds of the sale of the chattels heretofore distrained upon by your petitioners, and the proceeds of such sale be applied on account of the rent owing on premises 842, 844 and 846 Broad Street, Newark, New Jersey, prior to his occupancy as Receiver; 10

4. That an Order may be granted directing Harry G. Hendricks, Esquire, to show cause why he should not be compelled to pay your petitioners damages arising out of the unlawful sale, removal and destruction of certain fixtures, etc. attached to and being part of the freehold owned by and belonging to your petitioners; 20

5. And for such other and further relief as the Court may deem fit and proper, and your petitioners will ever pray, &c. 30

BLANCHARD & CAREY,  
Solicitors for and of Counsel  
with Petitioners.



**Affidavit of Nellie B. Jones, Annexed to  
Petition.**

IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                     |   |              |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|
|    | Between<br><div style="text-align: center; margin-left: 100px;">ERWIN GLASER,<br/>Complainant,</div> <div style="text-align: center; margin-left: 100px;">and</div> | } |              |
| 10 | ACHTEL STETTER'S RESTAURANT, a<br><div style="text-align: center; margin-left: 100px;">corporation, &amp;c.,<br/>Defendant.</div>                                   | } | On Bill, &c. |

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

NELLIE B. JONES, of full age, being duly sworn according to law, upon her oath deposes and says:

20     That she is the Secretary of the Junior Company and Senior Corporation, both corporations of the State of New Jersey; that she is duly authorized by the officers of said corporations to make this affidavit; and that she is familiar with the affairs of both corporations.

30     Said deponent affirms that there is due and owing to the Junior Company as rent for the premises known as 838 and 840 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$894.43 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$894.90;

40     That there is due and owing to the said Junior Company as rent for the premises known as 844 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$1661.10 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$702.13;



*Affidavit of Nellie B. Jones.*

That there is due and owing to the said Junior Company as rent for the premises known as 846 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$894.43 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$432.84;

That there is due and owing to the said Senior Corporation as rent for the premises known as 842 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$2204.17 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$600.63;

That there is in addition to the aforementioned rent due and owing from the said Harry G. Hendricks, Esquire for the period from February 20, 1928 to April 6, 1928, due and owing as unpaid rent on premises 838 and 840 Broad Street, Newark, New Jersey for the period of February 1, 1928 to February 20, 1928, under the aforementioned lease, the sum of \$393.54; there is due and owing as unpaid rent on premises 842, 844 and 846 Broad Street, Newark, New Jersey for the period of January 1, 1928 to February 20, 1928 under the aforementioned leases, the sums of \$3203.75, \$1984.87 and \$1600. respectively.

NELLIE B. JONES.

Sworn and subscribed to before me }  
this 29 day of August, 1928. }

MYLDRED E. SULLIVAN,  
A Notary Public of N. J.

A true copy.

FERD GARRETSON,  
Clerk.



**Affidavit of Ernest F. Keer, Annexed to  
Petition.**

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

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

10     1. I am the President of Senior Corporation and Junior Company, respectively, corporations of the State of New Jersey, and am familiar with the affairs of the said corporations and duly authorized to make this affidavit on behalf of the said corporations.

20     2. I have read the foregoing Petition and the matters and things therein contained are true; and particularly is it true that prior to the appointment of a Receiver for Achtel Setter's Restaurant, the Senior Corporation and Junior Company served a distress upon the goods and chattels of premises known as Nos. 838, 840, 842, 844 and 846 Broad Street, Newark, New Jersey; and that the said Receiver did sell the goods and chattels so distrained upon, under order of this Court, over the objection of the above named corporations, the lien of such distress to attach to the proceeds of such sale; and

30     that the Receiver did sell and cause to be removed from the various premises and destroyed, certain fixtures attached to and being part of the freehold and belonging to these corporations; and that the said Receiver did sell the lease covering #846 Broad Street Newark, New Jersey, over the objection, and in utter disregard of the rights of these corporations; all of which facts are set out more fully in the foregoing Petition.



*Affidavit of Ernest F. Keer.*

3. There is due and owing—rent for the premises known as Nos. 842, 844 and 846 Broad Street, Newark, New Jersey, from January 1, 1928 to April 6, 1928; and there is due and owing rent for the premises known as Nos. 838-840 Broad Street, Newark, New Jersey, from February 20, 1928 to April 7, 1928.

10

ERNEST F. KEER.

Sworn and subscribed before me }  
this 29th day of August, A. D. 1928. }

FREDERIC C. RITGER,  
Master in Chancery of New Jersey.

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3040



**Order to Show Cause.**

(Filed Aug. 29, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                             |                |
|----|-----------------------------------------------------------------------------------------------------------------------------|----------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHEL STETTER'S RESTAURANT, a<br>corporation, &c.,<br>Defendant. | } On Bill, &c. |
|----|-----------------------------------------------------------------------------------------------------------------------------|----------------|

20       This matter being opened to the Court by Blanchard & Carey, Esquires, solicitors for the petitioners herein; and it appearing in the Petition that the petitioners, Junior Company and Senior Corporation, are the owners and/or lessees of premises known as 838, 840, 842, 844 and 846 Broad Street, Newark, New Jersey; and it further appearing that Achtel Stetters Restaurant was the lessee of premises on February 20, 1928; and it further appearing that Harry G. Hendricks, Esquire was appointed a Receiver of said Achtel Stetters Restaurant, pursuant to a Bill of Complaint filed by

30       Erwin Glaser;

And it appearing that prior to the appointment of said Receiver, the petitioners herein served a distress upon the goods and chattels of said premises;

And it appearing that said Receiver did sell the said goods and chattels so distrained upon, under Order of this Court, over the objection of the peti-

40



*Order to Show Cause.*

tioners, the lien of such distress to attach to the proceeds of such sale;

And it further appearing that the Receiver did sell and cause to be removed from the various premises and destroyed, certain fixtures attached to and being part of the freehold and belonging to your petitioners;

10

And it further appearing that the said Receiver did sell the leases covering 846 Broad Street, Newark, New Jersey, over the objection, and in utter disregard of the rights, of your petitioner, Junior Company;

And it further appearing that there is due and owing as rent for the premises known as 838, 840 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$894.43 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$894.90;

20

And it further appearing that there is due and owing as rent for the premises known as 844 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$1661.10 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$702.13;

30

And it further appearing that there is due and owing as rent for the premises known as 846 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$894.43 besides taxes, assessments and other carrying charges as

40



*Order to Show Cause.*

specified in said lease, in the additional sum of \$432.84;

10 And it further appearing that there is due and owing as rent for the premises known as 842 Broad Street, Newark, New Jersey, from February 20, 1928 to April 6, 1928 the sum of \$2204.17 besides taxes, assessments and other carrying charges as specified in said lease, in the additional sum of \$600.63.

20 It is, on this 29th day of August, 1928, ordered that Harry G. Hendricks, Esquire, Receiver of Achtel Stetter's Restaurant, appear and show cause on the 4th day of September 1928 at the hour of ten o'clock in the forenoon at the Chancery Chambers of Newark, New Jersey, why the prayers of said petition should not be granted and the said Harry G. Hendricks, Esquire should not be compelled to pay to the petitioners herein the rents due and owing on the premises known as 838, 840, 842, 844 and 846 Broad Street, Newark, New Jersey, up to and including April 6, 1928; and why he should not be compelled to turn over to your petitioners the proceeds of the sale of the chattels heretofore distrained upon by your petitioners; and  
30 why he should not be compelled to pay to your petitioners the damages arising out of the unlawful sale, removal and destruction of certain fixtures, &c. attached to and being a part of the freehold owned by and belonging to your petitioners.

40 And it is further ordered that a true certified copy of this Order, together with true certified copies of the Petition and affidavits upon which the same is based, to be certified as then say the



*Order to Show Cause.*

petitioner's solicitors be served upon the said Harry G. Hendricks, Esquire, within three days from the date hereof.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

10

A true copy,  
FERD GARRETSON,  
Clerk.

20

30

40



**Final Account of Receiver.****IN CHANCERY OF NEW JERSEY.**

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT,  
Defendant.

On Bill, &amp;c.

10

TO HIS HONOR, EDWIN ROBERT WALKER,  
CHANCELLOR OF THE STATE OF NEW JERSEY:

20 I, Harry G. Hendricks, the Receiver heretofore appointed for 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 as aforesaid, and also of the moneys that have been disbursed by me as such receiver, and also an account of the claims against said defendant which have been presented to, and allowed by me.

30 I do further respectfully report that upon being appointed, I took possession of the defendant's place of business, which consisted of a large restaurant, Ball rooms and lodge rooms, located in premises Nos. 838-840-842-844-846 Broad Street, in the City of Newark, County of Essex.

I conducted said restaurant business from noon February 20, 1928 until February 28, 1928, when being satisfied that same was operating at a loss, discontinued said business.

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*Final Account of Receiver.*

The Receiver each day personally attended and conducted said business, purchased commodities, collected receipts and made disbursements, as shown in Schedules annexed hereto.

The premises where said business and assets of the defendant were located, were hazardous from lack of structural repairs, and on account of an old ice plant, and obsolete gas and electric appliances, required daily inspection by the receiver and assistants, and a portion of said premises structurally weak, required as a safety measure, removal of furniture and fixtures to another part of said premises. 10

Distrain for rent was levied by the lessors of said premises against the assets of said defendant, on February 20, 1928, shortly prior to the appointment of your receiver, viz: Junior Company, for two months rent for 846 Broad Street, Newark, \$1708.20; Junior Company for two months rent for 844 Broad Street, \$3065.66; Senior Corporation for two months rent for 842 Broad Street \$3635.74. 20

The receiver applied to this Court for an order to examine the above named lessors concerning the leaseholds and tenancy rights of the defendant, and in pursuance thereof caused certain officers of said lessor corporations to appear before a Special Master to discover said leases, and terms thereof. On March 1, 1928 your receiver applied to and received an order to sell the assets of the defendant, free from the liens of said distress. Said assets were duly inventoried, advertised for sale and sold at public vendue. 30

An audit of the defendant's books and accounts was compiled by an Accountant to ascertain the extent of defendant's estate. The assets of defen- 40



*Final Account of Receiver.*

dant were duly sold and said sale confirmed by order of this Court.

10 Your receiver remained in possession of the upper floors of the premises 838-840 Broad Street, and of the premises 842-844 Broad Street until April 6, 1928, and in possession of premises 846 Broad Street, until April 2, 1928, such continuance in possession being necessitated on account of removal of assets sold, and removal of property owned by various lodges, in possession of lodge rooms established in said premises.

20 The receiver offered for sale all the right, title and interest of the defendant in four leases covering said premises, pursuant to an order of this Court, and on April 2, 1928 sold said interest in lease covering 846 Broad Street, for \$1,000. to the highest bidder. The other three leases were abandoned and delivered up to the lessors on April 6, 1928, no bids having been received therefor.

Said sale and surrender was duly confirmed by an order of this court.

Schedule A. hereto annexed, shows all sums received from operation of defendant's business.

Schedule B. shows amounts collected and due defendant.

30 Schedule C. shows amount received from sale of leasehold 846 Broad Street.

Schedule D. shows amount received from sale of personal property of defendant.

Schedule E. shows disbursements for merchandise necessary to the operation of defendant's business.

Schedule F. shows disbursements to employees, during operation of said business.



*Final Account of Receiver.*

Schedule G. shows disbursements in wages after close of business, to custodians, watchmen and movers.

Schedule H. shows disbursements to auditor, advertising, appraisers, auctioneer and notices.

Schedule I. contains a list of creditors whose claims were filed and allowed, having priority.

Schedule J. is a list of creditors whose claims are general, proved and allowed. 10

Schedule K. is a statement of rent accrued during occupation of Receiver.

Schedule L. shows amount of rent and excesses claimed by lessors, for which distresses for rent were levied, which claims the Receiver disputes as having any priority of payment because he is advised that the amounts distrained for are in excess and contain items foreign and contrary to the statute concerning distress, Compiled Statutes of New Jersey, Vol. 2, page 1939. 20

HARRY G. HENDRICKS,  
Receiver.

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*Final Account of Receiver.*

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

10 HARRY G. HENDRICKS, receiver of Achtel-Stetter's Restaurant, 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  
 20 of his knowledge, information and belief.

HARRY G. HENDRICKS.

Sworn to and subscribed before me }  
 this 15th day of October, A. D. 1928. }

JAMES F. X. O'BRIEN,  
 Master in Chancery of New Jersey.

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*Final Account of Receiver.*

## SUMMARY.

## TOTAL RECEIPTS.

|             |           |                |
|-------------|-----------|----------------|
| Schedule A. | \$4047.08 |                |
| Schedule B. | 212.14    |                |
| Schedule C. | 1000.00   |                |
| Schedule D. | 5494.93   |                |
|             | <hr/>     | \$10,754.15 10 |

## TOTAL DISBURSEMENTS.

|                                                                                    |            |             |
|------------------------------------------------------------------------------------|------------|-------------|
| Schedule E.                                                                        | \$1369.07  |             |
| Schedule F.                                                                        | 2781.50    |             |
| Schedule G.                                                                        | 256.75     |             |
| Schedule H.                                                                        | 1729.01    |             |
|                                                                                    | <hr/>      | 6,136.33    |
| Balance on Hand                                                                    | \$4,617.82 | 20          |
| Schedule I. Priority claims allowed                                                | 805.70     |             |
| Schedule J. General claims, allowed                                                | 20,425.79  |             |
|                                                                                    | <hr/>      | \$21,231.49 |
| Schedule K. Receiver's rent                                                        | \$3,506.16 |             |
| Schedule L. Rent claim not filed.                                                  |            |             |
| Alleged due prior to appointment<br>of Receiver, disputed as excessive<br>distress | \$8,409.60 | 30          |



*Final Account of Receiver.*

## SCHEDULE A.

## RECEIPTS FROM OPERATION OF BUSINESS.

|    |          |  |            |
|----|----------|--|------------|
|    | 1928.    |  |            |
|    | Feb. 20. |  | \$63.50    |
|    | " 21.    |  | 752.46     |
| 10 | " 22.    |  | 653.65     |
|    | " 23.    |  | 401.75     |
|    | " 24.    |  | 522.98     |
|    | " 25.    |  | 566.85     |
|    | " 26.    |  | 504.34     |
|    | " 27.    |  | 581.55     |
|    |          |  | <hr/>      |
|    |          |  | \$4,047.08 |

20

## SCHEDULE B.

## COLLECTIONS ACCOUNTS RECEIVABLE.

|    |          |                              |          |
|----|----------|------------------------------|----------|
|    | 1928.    |                              |          |
|    | March 9. | Eureka Vacuum Cleaner Co.    | 33.40    |
|    |          | Central Railroad Co.         | 10.75    |
|    |          | Dr. Sam Bloom                | 5.00     |
| 30 | 15.      | Dietsch Restaurant           | 23.65    |
|    | 12.      | Hoffman Soda Co.             | 4.20     |
|    | 15.      | Pastry Baking Co.            | 23.15    |
|    | 26.      | N. J. Telephone Co.          | 3.49     |
|    | Apr. 2.  | Public Service Electric Co.  | 74.79    |
|    | 2.       | Broad & Market National Bank | 33.71    |
|    |          |                              | <hr/>    |
|    |          |                              | \$212.14 |

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*Final Account of Receiver.*

## SCHEDULE C.

|       |    |                                            |           |           |
|-------|----|--------------------------------------------|-----------|-----------|
| April | 2. | Sale of interest in lease<br>846 Broad St. |           |           |
|       |    | Deposit                                    | \$250.00  |           |
| June  | 2. | Balance                                    | 750.00    |           |
|       |    |                                            | <hr/>     |           |
|       |    |                                            | \$1000.00 | <b>10</b> |

## SCHEDULE D.

RECEIVED FROM SALE OF FURNISHINGS, FIXTURES  
AND OTHER PERSONAL PROPERTY.

|         |  |  |           |           |
|---------|--|--|-----------|-----------|
| 1928.   |  |  |           |           |
| June 8, |  |  | \$5494.93 | <b>20</b> |

## TOTAL RECEIPTS

|             |            |           |
|-------------|------------|-----------|
| Schedule A. | \$4047.08  |           |
| Schedule B. | 212.14     |           |
| Schedule C. | 1000.00    |           |
| Schedule D  | 5494.93    |           |
|             | <hr/>      |           |
|             | \$10754.15 | <b>30</b> |



*Final Account of Receiver.*

## SCHEDULE E.

## DISBURSEMENTS FOR MERCHANDISE AND NECESSARIES IN OPERATION OF RESTAURANT BUSINESS.

1928.

|    |          |                                          |        |
|----|----------|------------------------------------------|--------|
|    | Feb. 21. | Newark Hardware & Plumb. Sup-            |        |
| 10 |          | ply—3 mops                               | 1.50   |
|    |          | Fairview Dairy—Milk and Cream            | 19.68  |
|    |          | M. Augenblick Bros.—Eggs and Butter      | 88.20  |
|    |          | Fraziers Inc.—Lobster & Shrimp           | 15.13  |
|    | " 22.    | J. Friend—Cigars and Cigarettes          | 6.25   |
|    |          | Branford Electric Co.—Change Safe Comb.  | 15.00  |
|    | " 23.    | Ludlow & Squier—Padlock                  | .50    |
| 20 |          | V. Scaccia—Ice                           | 2.10   |
|    |          | Grover Bros.—Window Hooks                | .40    |
|    |          | Fleischman Co.—4 Lbs. Yeast              | 1.00   |
|    |          | Newark Grinding—Sharpening Knives        | 1.00   |
|    |          | Haussling & Baader—Lock and Hooks        | 3.05   |
|    |          | F. W. Woolworth Co.—Lock, Hooks and Eyes | 1.40   |
|    |          | Silver Rod Stores—Cigarettes             | 11.44  |
| 30 |          | H. Knoderer—Bacon                        | 4.80   |
|    |          | Fairview Dairy—Milk and Cream            | 50.80  |
|    |          | J. H. Michaels—Fish                      | 22.50  |
|    |          | J. Bertsch—Vegetables                    | 35.10  |
|    |          | Frazier, Inc.—Fish                       | 36.08  |
|    | " 24.    | L. F. Hersh & Bro.—Flour                 | 12.00  |
|    |          | G. C. Heller—Meat                        | 107.62 |
|    |          | A. G. Ronde—Transportation               | 7.00   |
|    |          | Everett Bakery—Bread                     | .26    |
|    |          | Chemical Charcoal—Charcoal               | 10.20  |
| 40 |          | P. Galante—Vegetables                    | 41.75  |



*Final Account of Receiver.*

|       |                                         |           |    |
|-------|-----------------------------------------|-----------|----|
| " 25. | Fairview Dairy—Milk and Cream           | 40.90     |    |
|       | P. Galante—Vegetables                   | 21.85     |    |
|       | G. C. Heller—Meats                      | 207.26    |    |
|       | Robinson-Singer—Keys                    | .15       |    |
|       | H. Scaccio—Ice                          | 2.10      |    |
|       | Everett Bakery—Bread                    | .65       |    |
|       | Fleischman Co.—Yeast                    | 1.00      |    |
|       | Laudew & Blume—Sawdust                  | 2.00      | 10 |
|       | S. C. Weber—Tea, Spice                  | 1.14      |    |
|       | C. Monheimer—Olives, Horseradish        | 4.60      |    |
|       | H. Scaccia—Ice                          | 1.05      |    |
| " 27. | A. G. DeRonde—Transportation            | 5.25      |    |
|       | Quality Mills—Spices                    | 3.50      |    |
|       | Fairview Dairy—Milk and Cream           | 21.80     |    |
|       | J. E. Dickerson—Horse Radish            | 1.00      |    |
|       | F. J. Scanlon—Coal, 2/21, 2/23,<br>2/24 | 87.71     | 20 |
|       | Humane Society—Disposal 51 Cats         | 5.00      |    |
|       | Snow Removal                            | 2.00      |    |
| " 28. | Frazier, Inc.—Fish                      | 19.63     |    |
|       | M. Augenblick—Butter                    | 6.30      |    |
|       | E. Glazier—Meat                         | 237.96    |    |
|       | L. F. Hersh & Bro.—Groceries            | 27.95     |    |
|       | L. Vincon—Check 63 persons              | 30.22     |    |
|       | C. Heller—Meat                          | 118.84    |    |
|       | Frank J. Scanlon—Coal                   | 23.40     |    |
| " 29. | Western Union Clock                     | 1.05      | 30 |
|       |                                         | <hr/>     |    |
|       |                                         | \$1369.07 |    |



*Final Account of Receiver.*

## SCHEDULE F.

WAGES TO WAITERS, CHEFS, DISHWASHERS AND  
OTHER HELP CONDUCTING BUSINESS.

|    |         |                                                   |
|----|---------|---------------------------------------------------|
|    | 2-20-28 | Arthur Mentze, 10.00 cash.                        |
|    | 2-21-28 | 8 waiters ex., 24.00 cash.                        |
| 10 | 2-23-28 | Mrs. H. O'Neill, 41.64 check 105—11 days' salary. |
|    |         | H. Fenzlien, 83.32 check 106—11 days' salary.     |
|    |         | A. Mentze, 27.50 check 111—Bal. Sal. of 11 days.  |
|    |         | H. Kempel, 27.00 check 112—11 day salary.         |
|    |         | H. Wise, 41.64 check 104—11 days' salary.         |
|    |         | 5 waiters ext., 10.00 cash.                       |
| 20 |         | Cashier—Kiwanna Dn, 1.00 cash.                    |
|    | 2-24-28 | H. Herbert, 9.00 cash.                            |
|    | 2-25-28 | 4 waiters ex., 12.00 cash.                        |
|    | 2-27-28 | Vlaskamp, 24.98 cash.                             |
|    |         | Brennan, 19.64 cash.                              |
|    |         | Drozak, 39.00 cash.                               |
|    |         | Packhard, 19.64 cash.                             |
|    |         | 2 bus boys, banquet, 3.00 cash.                   |
|    |         | Ruder, 39.60 cash.                                |
| 30 |         | Schmidt, 65.00 cash.                              |
|    |         | Holowitz, 26.04 cash.                             |
|    |         | Barientto, 75.83 cash.                            |
|    |         | E. Kollause, 75.83 cash.                          |
|    |         | V. Solda, 162.50 cash.                            |
|    |         | A. Keane, 32.50 cash.                             |
|    |         | A. Schwab, 75.83 cash.                            |
|    |         | A. Lorenz, 17.70 cash.                            |
|    |         | S. Posipanko, 25.00 cash.                         |
| 40 |         | F. Belette, 42.65 cash.                           |



*Final Account of Receiver.*

|         |                                               |    |
|---------|-----------------------------------------------|----|
|         | S. Kauchaiewiez, 4.50 cash.                   |    |
|         | L. Terro, 43.40 cash.                         |    |
|         | F. Phillippo, 43.40 cash.                     |    |
|         | A. Laiekamp, 23.90 cash.                      |    |
|         | H. Loss, 116.33 cash.                         |    |
|         | O. Soloano, 12.36 cash.                       |    |
|         | J. Hienz, 26.94 cash.                         |    |
|         | Frances, 45.00 cash.                          | 10 |
|         | H. Reneke, 11.00 cash.                        |    |
|         | K. Batman, 34.00 cash.                        |    |
|         | C. Ahrens, 12.00 cash.                        |    |
|         | A. P. Bateman, 34.00 cash.                    |    |
|         | E. Nixon, 29.00 cash.                         |    |
|         | F. Mucheman, 27.08 cash.                      |    |
|         | A. Walters, 58.32 cash.                       |    |
|         | A. Bateman, 3.00 cash.                        |    |
|         | C. H. Kollance, 21.66 cash.                   | 20 |
|         | M. Wichter, 43.33 cash.                       |    |
|         | K. Mudliez, 28.17 cash.                       |    |
|         | J. Rabe, 30.17 cash.                          |    |
|         | J. Chikowski, 28.17 cash.                     |    |
|         | A. Freund, 26.00 cash.                        |    |
| 2-27-28 | F. Polacek, 21.66 cash.                       |    |
| 2-27-28 | E. Stehlin, 4.16 Extra—cash.                  |    |
|         | T. Hollio, 47.14 cash.                        |    |
|         | M. Kivenska, 27.50 cash.                      |    |
|         | H. Nadler, 20.00 cash.                        | 30 |
|         | F. Roda, 11.00 cash.                          |    |
|         | F. Schamenlach, 145.00 Check 135, 17<br>days. |    |
|         | C. Kovahle, 75.83 Check 134, 15 days.         |    |
|         | R. Walter, 26.04 Check 130, 15 days.          |    |
|         | H. Holt, 26.04 Check 132, 15 days.            |    |
|         | J. Hosak, 32.50 Check 128, 15 days' salary.   |    |
|         | F. Thomas, 26.04 check 131, 15 days.          |    |
|         | A. Szakack, 27.08 Check 129, 15 days.         | 40 |



*Final Account of Receiver.*

|         |                                              |
|---------|----------------------------------------------|
|         | J. Antol, 56.00 Check 127, 15 days.          |
|         | E. Stehlin, 54.16 Check 126—15 days.         |
|         | J. Salvaneli, 75.83 Check 123, 15 days.      |
|         | W. Brittle, 43.33 Check 120, 15 days.        |
|         | S. Kucherawicz, 39.00 Check 119, 15 days.    |
|         | W. Mix, 47.14 Check 122, 15 days.            |
|         | R. Strauss, 96.42 Check 118, 15 days.        |
| 10      | E. C. Hamlin, 86.66 Check 125, 15 days.      |
|         | F. Klingbeil, 45.00 Check 124, 15 days.      |
| 2-23-28 | 5 ex. waiters, 15.00, Lin. Nat. check No. 5. |

Total \$41.50.57.

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## SCHEDULE G.

## 20 WAGES AFTER CLOSE OF BUSINESS, CUSTODIANS.

|          |                |         |
|----------|----------------|---------|
| Feb. 27. | A. G. De Ronde | \$75.00 |
| Mar. 3   | E. Kollance    | 29.15   |
|          | C. H. Kollance | 10.00   |
| " 5.     | A. G. de Ronde | 42.00   |
| " 7.     | C. H. Kollance | 10.00   |
| " 17.    | A. G. de Ronde | 66.00   |
| " 27.    | A. N. de Ronde | 24.60   |

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\$256.75



*Final Account of Receiver.*

## SCHEDULE H.

DISBURSEMENTS, ADVERTISING, AUDITOR AND  
NOTICES.

|          |                                |           |    |
|----------|--------------------------------|-----------|----|
| June 28. | Newark Evening News            | \$23.51   |    |
| June 28. | Barton Business Service—       |           |    |
|          | Printing notices to creditors  | 6.63      | 10 |
|          | F. N. Sommer Adv. Agency—      |           |    |
|          | Advertising newspapers, sale   |           |    |
|          | of leases                      | 114.66    |    |
|          | R. E. Salmon, Stenographer,    |           |    |
|          | examination of landlord re     |           |    |
|          | leases                         | 53.50     |    |
|          | S. J. Unger, Prem. Receiver's  |           |    |
|          | bond                           | 25.00     |    |
|          | Newark Sunday Call advertise-  |           |    |
|          | ment                           | 28.56     | 20 |
| June 28. |                                |           |    |
|          | A. Wilner, Auctioneer, to sale |           |    |
|          | of assets                      | 590.55    |    |
|          | W. B. Auction, Advertising     |           |    |
|          | sale                           | 86.60     |    |
|          | H. Besser, Auditor of books    | 500.00    |    |
|          | M. Vail, Appraiser             | 150.00    |    |
|          | F. Israel, Appraiser           | 150.00    |    |
|          |                                |           | 30 |
|          |                                | <hr/>     |    |
|          |                                | \$1729.01 |    |



*Final Account of Receiver.*

## SCHEDULE I.

LIST OF CREDITORS, WHOSE CLAIMS HAVE BEEN  
FILED AND ALLOWED AS HAVING PRIORITY OVER  
GENERAL CREDITORS.

|    |                                                                                                              |          |
|----|--------------------------------------------------------------------------------------------------------------|----------|
|    | (#49) 1. City of Newark, taxes 1928                                                                          | \$383.00 |
| 10 | (#26) 2. 16th Ward Democratic Club,<br>Inc. Simandl & Simandl, Attys.<br>24 Branford Place, Newark,<br>N. J. | 25.00    |
|    | (#37) 3. City of Newark, 1927 taxes                                                                          | 397.70   |
|    |                                                                                                              | <hr/>    |
|    |                                                                                                              | \$805.70 |

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## SCHEDULE J.

LIST OF GENERAL CREDITORS, WITH THE AMOUNT OF  
THEIR CLAIMS PROVED AND ALLOWED.

|    |                                                                              |        |
|----|------------------------------------------------------------------------------|--------|
|    | 1. Baker Printing Co. 251 Market St.,<br>Newark, N. J.                       | 6.70   |
|    | 2. A. T. Schlishting Co., 263 Market St.,<br>Newark, N. J.                   | 141.21 |
| 30 | 3. Whitney Dup. Check Co., 406 W. 31st<br>St., N. Y.                         | 55.10  |
|    | 4. Fleischmann Company, 699 Washing-<br>ton, N. Y.                           | 18.25  |
|    | 5. White Lobster Co., Morris H. Cohn,<br>Atty., 60 Park Place, Newark, N. J. | 131.80 |
|    | 6. Geo. Rahmann Co., 31 Spruce St.,<br>N. Y.                                 | 22.77  |
|    | 7. Mrs. Chas. Jebert, 103 Court St.,<br>Newark                               | 26.75  |

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|                                                                                                                 |          |    |
|-----------------------------------------------------------------------------------------------------------------|----------|----|
| 8. A. R. Meeker Co., 805 Broad St.,<br>Newark                                                                   | 2.91     |    |
| 9. J. H. Michaels Co., Fulton Market,<br>N. Y.                                                                  | 309.08   |    |
| 10. August Bevensee, 43 Fabyan Place,<br>Newark                                                                 | 120.50   |    |
| 11. M. Augenblick & Bro., Stein, McGlynn<br>& Hannock                                                           | 1,467.05 | 10 |
| 12. Western Union Telegraph Co.                                                                                 | 5.45     |    |
| 13. H. G. Mooney Co., 301 Frelinghuysen<br>Ave.                                                                 | 24.53    |    |
| 14. Gottgried Krueger Brew Co., Newark                                                                          | 416.00   |    |
| 15. Michael J. Colondes, 2 Hollywood<br>Ave., Hillside                                                          | 91.50    |    |
| 16. Moses Blum, Stein, McGlynn & Han-<br>nock, Attys.                                                           | 243.10   |    |
| 17. E. Pritchard, 327 Spring St., N. Y.                                                                         | 470.70   | 20 |
| 18. Geor. M. Still, Inc., Boats 1 & 3, Foot<br>Pike St., N. Y.                                                  | 1,799.38 |    |
| 19. T. A. Snyder, Preserve Co., c/o Na-<br>tional Surety Co., 115 Broadway,<br>N. Y.                            | 59.85    |    |
| 20. Erwin Glaser, Milton Unger, Atty.                                                                           | 5,143.03 |    |
| 21. Recht & Rosenbaum, Inc., Neekin Ad-<br>justment Co., 9 Clinton St., Newark                                  | 73.35    |    |
| 22. N. F. Trefeihen Co., Portland, Maine                                                                        | 546.00   |    |
| 23. American Laundry Machine Co., 625<br>6th Ave., N. Y., Harold C. Mendel-<br>sohn, Atty., 20 Broad St., N. Y. | 73.40    | 30 |
| 24. Disparquet Hout & Morrense Co., 108<br>W. 22nd St., N. Y.                                                   | 170.11   |    |
| 25. Edward Bramm, Inc., 82 Somerset St.,<br>David L. Schwartz, Atty., 60 Park<br>Pl., Newark                    | 371.30   |    |
| 26. Righter Mfg. Co., Beals & Nichol-<br>son, Attys., 1 Madison Ave., N. Y.                                     | 22.00    | 40 |



*Final Account of Receiver.*

|    |                                                                            |          |
|----|----------------------------------------------------------------------------|----------|
|    | 27. Wilkinson Gaddis & Co., Coult & Satz, Attys., Kinney Bldg., Newark     | 590.75   |
|    | 28. Lee Furniture Co., Milton Unger, Atty.                                 | 65.00    |
|    | 29. J. E. Linde Paper Co., Milton Unger, Atty.                             | 162.77   |
|    | 30. L. Barth & Co., Cooper Square, N. Y.                                   | 861.36   |
| 10 | 31. Ludlow & Squier, 97 Market St.                                         | 64.18    |
|    | 32. J. W. May, 225 Alexander St.                                           | 92.40    |
|    | 33. W. C. Beardsley, 247 Montclair Ave., Newark                            | 2,391.13 |
|    | 34. Metropolitan Hotel Supply Co., 21 9th Ave., N. Y.                      | 690.66   |
|    | 35. J. J. Hockenjos Co., 829 Broad St.                                     | 113.04   |
|    | 36. Evening News Pub. Co., Sam Hollander, Atty., Chamber of Commerce Bldg. | 67.20    |
| 20 | 37. Frazier's Inc., 273 Front St., N. Y.                                   | 1,933.11 |
|    | 38. John T. Stanley Co., c/o Nelkin Adjustment Co., 9 Clinton Street       | 148.80   |
|    | 39. Oaklite Products, Inc., 22 Thomas St., N. Y.                           | 112.14   |
|    | 40. Carl Upmann, Inc., Jacob Saul, Atty., 1 Exchange Place, N. C.          | 152.25   |
|    | 41. F. W. Lee Pub. Co., 45 W. 45th St., N. Y.                              | 40.00    |
| 30 | 42. Meyer & Lang, Jacob Lipman, Atty., 738 Broad St.                       | 405.05   |
|    | 43. Hygeina Antiseptic Tooth Pick Co., Wm. Harris, Atty.                   | 84.00    |
|    | 44. Cook China Co., Goldstein & Goldstein, Attys., 972 Broad St.           | 374.24   |
|    | 45. N. J. Bell Telephone Co., 281 Washington St.                           | 118.09   |
|    | 46. Jos. Riggin & Bros. Crisfield, N. J.                                   | 541.34   |
| 40 | 47. Newark Star Eagle                                                      | 88.75    |



*Final Account of Receiver.*

|                                                               |             |
|---------------------------------------------------------------|-------------|
| 48. Samuel S. Beard & Co., 83 Front St.,<br>N. Y.             | 491.91      |
| 49. Frank J. Scanlon, Pomerehne, Laible<br>& Kautz, Attorneys | 1,764.00    |
|                                                               | <hr/>       |
|                                                               | \$20,425.79 |

## SCHEDULE K.

10

STATEMENT OF RENT ACCRUED DURING OCCUPATION  
OF RECEIVER OF PREMISES 838-840-842-844-846  
BROAD STREET, NEWARK, N. J., AS FOLLOWS:

|                                                                                                                                        |           |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 838-840 Broad Street, Junior Company,<br>Inc., February 20th to April 6th, 1928<br>@ \$7,000 per annum, 46 days at \$19.15<br>per day, | \$880.90  |
| 842 Broad Street, Senior Corporation,<br>Feb. 20 to April 6, 1928.                                                                     |           |
| 46 days @ \$47.24 per day,                                                                                                             | 2073.04   |
| 844 Broad Street, Junior Company, Inc.<br>February 20 to April 6, 1928.                                                                |           |
| 46 days @ \$35.62 per day,                                                                                                             | 1638.52   |
| 846 Broad Street, Junior Company, Inc.,<br>Feb. 20 to April 2, 1928, 42 days @ \$19.15                                                 | 804.30    |
|                                                                                                                                        | <hr/>     |
|                                                                                                                                        | \$5396.76 |

20

|                                                                                                                                                                                  |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 2 stores in 838-840 Broad Street @ \$7000<br>each per annum, rent paid by tenant<br>direct to Junior Company, Inc., credit<br>from Feb. to April 6, 46 days @ \$41.10<br>per day | \$1,890.60 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|

30

|                          |            |
|--------------------------|------------|
| Rent accrued as Receiver | \$5,396.76 |
| Credit 838-840 Broad St. | 1,890.60   |
|                          | <hr/>      |
|                          | \$3,506.16 |

40



*Final Account of Receiver.*

## SCHEDULE L.

The following items of rent and taxes and excess charges were distrained for by lessors of premises occupied by defendant, for which lessors have filed no formal claims, with the Receiver.

|    |                                                 |           |            |
|----|-------------------------------------------------|-----------|------------|
| 10 | 842 Broad Street, Rent \$17,250. per annum      |           |            |
|    | Two months,                                     | \$2875.00 |            |
|    | Distress claim                                  | 3635.74   |            |
|    | Excess over rent                                |           | \$760.74   |
| 20 | 844 Broad Street, Rent \$13,000 per annum       |           |            |
|    | Two months                                      | \$2166.67 |            |
|    | Distress claim                                  | 3065.66   |            |
|    | Excess over rent                                |           | 898.99     |
| 20 | 846 Broad Street, Rent \$7000 per annum         |           |            |
|    | Two months                                      | \$1166.67 |            |
|    | Distress claim                                  | 1708.20   |            |
|    | Excess over rent                                |           | 541.53     |
|    |                                                 |           | <hr/>      |
|    |                                                 |           | \$2,201.26 |
| 30 | Rents claimed two months prior to Receivership. |           |            |
|    | 842 Broad Street                                | \$3635.74 |            |
|    | 844 Broad Street                                | 3065.66   |            |
|    | 846 Broad Street                                | 1708.20   | \$8,409.60 |
| 40 | Rent due per lease.                             |           |            |
|    | 842 Broad Street                                | \$2875.00 |            |
|    | 844 Broad Street                                | 2166.67   |            |
|    | 846 Broad Street                                | 1166.67   | \$6,208.34 |
|    |                                                 |           | <hr/>      |
|    | Excess                                          |           | \$2,201.26 |



**Order to Show Cause on Receiver's  
Account.**

(Filed Oct. 16, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT,  
Defendants.

On Bill, &c.

10

Harry G. Hendricks, Receiver of the above-named defendant company, heretofore appointed by this Court, having presented and filed his final report as such Receiver, together with an audit of his accounts from the date of his appointment, February 20, 1928 to June 28, 1928, covering the entire period of said receivership, and it appearing that the receipts of said receiver amounted to \$10,754.15 and that his disbursements amount to \$6,136.33, leaving a cash balance in his hands amounting to \$4,617.82 and that there is due from the receiver to the lessors of the premises occupied by the defendant company, for use and occupation of said premises of said receiver during administration, rent the amount of which the receiver disputes, and that said receiver is desirous of having his accounts passed and the true amount of said rent determined, and of having his fees and allowances as receiver, and the fees and costs of his counsel, fixed and determined and of being discharged as such receiver.

20

30

40



*Order to Show Cause on Receiver's Account.*

It is on this 16th day of October, 1928, on motion of Pomerehne, Laible & Kautz, of Counsel with said Receiver,

10 ORDERED, that the creditors of said defendant company, who have filed claims with said receiver, and the Junior Company and Senior Corporation,  
 20 lessors and rent claimants, do show cause before the Chancellor, in the Chancery Chambers in the City of Newark (Industrial Building, 1060 Broad Street) on the 30th day of October, 1928, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon, why the reports of said receiver should not be approved and the accounts of said receiver allowed, and why an order should not be made fixing and determining  
 30 the fees and allowances of said receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and determining the amount of rent due for use and occupation of premises by said receiver, and directing the distribution of the balance of the funds in the hands of said receiver, if any, among the several creditors who have presented valid claims to said receiver, in proportion to the amount of their respective claims, and why said receiver should not  
 40 be discharged from further duties and liabilities in connection with said trust,

And it is FURTHER ORDERED, that within five days from the date hereof, a copy of this order (which may be uncertified) together with a notice or statement of the filing of said account and a statement of the amount said receiver will ask the Court to allow him as compensation for his services rendered, and also the amount which counsel for the



*Order to Show Cause on Receiver's Account.*

complainant, and of the receiver, will ask to have allowed them for their services, be mailed to each of the creditors of said defendant company, who have filed their claims with said receiver, or their attorneys, as the same appears in the schedules annexed to said receiver's report, at their respective post-office addresses, if the same can be ascertained, with the postage prepaid thereon, and it is further ordered that the said account be referred to Joseph G. Wolber, Esq., a special master of this court to audit the same and report thereon on or before October 30, 1928 and that a copy of this account be filed with the Sergeant-at-Arms. 10

Respectfully advised,

E. R. WALKER,

C. 20

ALONZO CHURCH,

V. C.

A true copy.

FERD GARRETSON,

Clerk.

To:

JUNIOR COMPANY, INC.

TAKE NOTICE that the final account of Harry G. Hendricks, Receiver of Achtel-Stetters Restaurant, has been filed in the Court of Chancery of New Jersey, and that the Receiver will ask as his allowance \$2,500 and that counsel for the Receiver will ask for an allowance of \$2,500 and their taxed costs, and counsel for the complainant will ask for an allowance of \$500.00 and his taxed costs of suit. 30

POMEREHNE, LAIBLE & KAUTZ,

Solicitors of Receiver. 40



**Exceptions to the First and Final  
Report of the Receiver.**

(Filed October 29, 1928.)

IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 | <div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> <p>Between</p> <p style="text-align: center;">ERWIN GLASER,<br/>Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">ACHTEL STETTER'S RESTAURANT, a<br/>Corporation,<br/>Defendant.</p> </div> <div style="width: 5%; text-align: center;">}</div> <div style="width: 55%;"> <p>On Bill, &amp;c.</p> </div> </div> |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

TO THE HONORABLE EDWIN ROBERT WALKER, Chan-  
cellor of the State of New Jersey:

20

The Junior Company and the Senior Corporation, both corporations of the State of New Jersey, and being the landlords and owners of premises 838 to 846 Broad Street, Newark, New Jersey, and creditors of the defendant herein, hereby except to the First and Final Report and Account of Harry G. Hendricks, Receiver, in the above entitled cause as follows:

30

ONE: They except to the removal by the Receiver of the furniture and fixtures upon the premises Nos. 838-846 Broad Street, Newark, on the ground of hazard and danger and allege that the premises were in a safe and satisfactory condition on February 20, 1928 when the Receiver took possession. They further state that the Receiver under no circumstances took any greater right in the premises than was held by the defendant and that the right

40



*Exceptions to the First and Final Report of the Receiver.*

of the defendant and of the receiver in the premises under the leases whereby same were held never gave to the defendant or the Receiver any right, power or authority to alter or change the condition of the said premises or to remove the fixtures thereon, but that such action constituted waste on the part of the said Receiver for which the said Receiver should be held accountable to the Exceptants in such amount as shall be determined upon a reference to a Master of this court. 10

Two: They except to the expenditure of \$5519.64 by the Receiver in the operation of the business of the defendant from February 20th, 1928 to February 28th, 1928 at a loss of \$1472.56 as shown in the account of the Receiver, herein excepted to, when the exercise of reasonable business judgment would have clearly demonstrated the inadvisability of continuing the same and especially when the defendant had suspended its business prior to the Receivership as recited in the Order of the Receiver's appointment and no power whatsoever was given to the Receivers in the Order of his appointment to operate and conduct said business. 20

THREE: They except to the failure and refusal of the Receiver to abandon the leases to the premises occupied by the defendant to the Exceptants forthwith in view of the fact that same were cancelled and that no rights under said leases reside in the Receiver. They except further to the offer for sale and the sale of the leases to premises No. 846 Broad Street, Newark, on the ground that the Receiver had no right or title in said lease and that same was done to the great injury of your exceptants; they ex- 30



*Exceptions to the First and Final Report of the Receiver.*

cept to the failure of the Receivers to recognize the verified petitions and affidavits filed by your exceptants with this Court of claims for rent due to your exceptants from the defendant prior to the Receivership and they except further to the Receiver's failure to allow said claims in their entire amount as set forth in said petition and affidavits and as evidenced by the distress levied upon the said property prior to the Receivership, inasmuch as the said sum so claimed by your exceptants were in exact accordance with leasing agreements entered into between your exceptants and the defendant corporation.

FOUR: They except to the action of the Receivers in holding possession of the premises 838 to 844 Broad Street, Newark, New Jersey, until the 6th day of April, 1928 on the alleged ground that such retention of possession was necessary to protect other assets of the insolvent estate, especially in view of the fact that all other assets were sold on March 1, 1928 and were immediately thereafter removed from the said premises; they except to the expenditure by the Receiver of \$1729.00 for advertising and other expenses as being grossly excessive and unreasonable exercise of judgment on the part of the Receiver in view of the value and character of the assets in the Receiver's hands.

FIVE: They except to the failure of the Receiver to allow the claim of your exceptants for rent due your Exceptants from the Receiver for the period of the Receiver's occupancy of the premises in the amounts demanded by your Exceptants and as set forth in petitions and affidavits hereinbefore presented to this Court and served upon the Receiver;



*Exceptions to the First and Final Report of the Receiver.*

more particularly they except to the allowance by the Receiver of a claim of \$880.90 for rent of premises 834 to 840 Broad Street, Newark, New Jersey for the period from February 20th to April 6th, 1928 and allege that the true and proper rental due from the Receiver to your Exceptant, the Junior Company, for said properties should be \$882.28. 10

They except to the failure of the Receiver to allow the claim of your exceptants for rent due your Exceptants from the Receiver for the period of the Receiver's occupancy of the premises in the amounts demanded by your Exceptants and as set forth in petitions and affidavits hereinbefore presented to this Court and served upon the Receiver; more particularly they except to the allowance by the Receiver of a claim of \$2073.04 for rent of premises No. 842 Broad Street, Newark, New Jersey for the period from February 20th to April 6th, 1928 and allege that the true and proper rental due from the Receiver to your Exceptant, the Senior Corporation, for said property should be \$2936.94. 20

They except to the failure of the Receiver to allow the claim of your Exceptants for rent due your Exceptants from the Receiver for the period of the Receiver's occupancy of the premises in the amounts demanded by your Exceptants and as set forth in petitions and affidavits hereinbefore presented to this Court and served upon the Receiver more particularly they except to the allowance by the Receiver of a claim of \$1638.52 for rent of premises No. 844 Broad Street, Newark, New Jersey for the period from February 20th to April 6th, 1928, and allege that the true and proper rental due from the Receiver to your Exceptant, the Junior Company, for said property should be \$1758.19. 30 40



*Exceptions to the First and Final Report of the Receiver.*

10 They except to the failure of the Receiver to allow the claim of your Exceptants for rent due your Exceptants from the Receiver for the period of the Receiver's occupancy of the premises in the amounts demanded by your Exceptants and as set forth in petitions and affidavits hereinbefore presented to this Court and served upon the Receiver; more particularly they except to the allowance by the Receiver of a claim of \$804.30 for rent of premises No. 846 Broad Street, Newark, New Jersey for the period from February 20th to April 6th, 1928 and allege that the true and proper rental due from the Receiver to your Exceptant, the Junior Company, for said property should be \$1484.06.

20 SIX. They except to the deduction by the Receiver from the rent due from the Receiver to your Exceptant, the Junior Company, of the sum of \$1890.60 being the rental for two stores on premises Nos. 838 to 840 Broad Street, Newark, New Jersey, inasmuch as the sub-leases to said stores are the property of Ernest F. Keer, an individual, acquired by the said Ernest F. Keer by assignment prior to the incorporation of the defendant, Achtel Stetter's Restaurant, and in no way concerning the liability of Achtel Stetter's Restaurant to the land-  
30 lord for the rent of the entire premises 838 to 840 Broad Street, Newark, New Jersey.

BLANCHARD & CAREY,  
Solicitors for the Exceptants  
the Junior Company and  
the Senior Corporation.

A true copy.

FERD GARRETSON,

40

Clerk.



**Order Approving Receiver's Accounts  
and Discharging Receiver.**

(Filed November 13, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT, a  
corporation,  
Defendants.

On Bill, &c.

10

This matter coming on to be heard upon an order to show cause, made on the 16th day of October, 1928, why the reports of the Receiver of the above named company should not be approved and the accounts and audits filed by him allowed, and why an order should not be made fixing and determining the fees and allowances of the said receiver and directing the distribution of the balance of the funds in the hands of said Receiver, if any, among the several creditors who have presented claims to said Receiver, and it appearing that the final report of said Receiver, together with an audit of his account, have remained upon the files of the Clerk of this Court, in accordance with the directions of said order; and it appearing that copies 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, and by counsel with the complainant, as compensation for their services, have been mailed to each of the creditors of said defendant company,

20

30

40



*Order Approving Receiver's Accounts and  
Discharging Receiver.*

10 who have filed their claims, with said Receiver, or  
to their attorneys, so far as the same could be as-  
certained, in accordance with the provisions of said  
order, and it appearing that said Receiver's ac-  
counts are correct, and that the same ought to be  
20 allowed, and it further appearing that exceptions  
to said Receiver's account have been filed by The  
Junior Company and Senior Corporation, landlords  
of the premises occupied by the defendant, and said  
exceptions having been heard and argued by coun-  
sel for said Junior Company and Senior Corpora-  
tion, and Pomerehne, Laible & Kautz, of Counsel  
with the Receiver, and Milton Unger, of Counsel  
with complainant, and the same having been duly  
considered by the Court, it is on this thirteenth  
20 day of November, 1928, upon motion of Pomerehne,  
Laible & Kautz, of Counsel with the Receiver,

ORDERED, that the exceptions filed to the report of  
said Receiver be and the same hereby are overruled  
and set aside; and that the accounts filed by said  
Receiver in said cause be and the same hereby are  
allowed and confirmed.

30 And it appearing that the receipts of said Re-  
ceiver have amounted to \$10,754.15 and that his dis-  
bursements have amounted to \$6,136.33 leaving a  
cash balance in his hands of \$4,617.82 which bal-  
ance has been further increased by interest on his  
deposit in the sum of \$26.31, making a total balance  
in his hands of \$4,644.13,

40 It is further ordered that said Receiver be al-  
lowed for his service the sum of \$2500 00/100 and  
that counsel for said Receiver be allowed the sum  
of \$2500 00/100 together with the costs of these  
proceedings to be taxed, and that counsel for the



*Order Approving Receiver's Accounts and  
Discharging Receiver.*

complainant be allowed for his services the sum of \$500 00/100.

And it is further ordered that Joseph G. Wolber, Special Master, who audited the accounts of said Receiver be allowed the sum of \$100 00/100 for his services therein.

10

And 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 distribution 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.

20

And it is further ordered, adjudged and decreed that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree, the said Receiver be discharged from all obligations in relation to said trust, except as to any which may hereafter come to his hands as said Receiver.

30

Respectfully advised,

E. R. WALKER,  
C.

ALONZO CHURCH,  
V. C.

A true copy,  
FERD GARRETSON,  
Clerk.

40



**Order.**

(Filed Nov. 13, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                                                                                                                                                                                                                                |   |              |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br><div style="text-align: center; margin: 10px 0;">           ERWIN GLASER,<br/>           Complainant,         </div> <div style="text-align: center; margin: 10px 0;">           and         </div> <div style="text-align: center; margin: 10px 0;">           ACHTEL STETTER'S RESTAURANT, a<br/>           corporation,<br/>           Defendant.         </div> | } | On Bill, &c. |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|

20 This matter coming on to be heard upon an order to show cause made the twenty-ninth day of August, 1928, why the Receiver of the above named defendant company should not be compelled to pay to the Junior Company and Senior Corporation, rents alleged to be due on premises owned by said Junior Company and Senior Corporation, and why the said Receiver should not be compelled to turn over to said corporations the proceeds of the sale of chattels and assets of the defendant, distrained upon for rent by said corporations, and why said receiver should not be compelled to pay said corporations damages, arising out of alleged unlawful

30 sale of certain fixtures of said defendant, and the several matters having been argued by Blanchard & Carey, of Counsel with said Junior Company and Senior Corporation, and Pomerehne, Laible & Kautz, of Counsel with the said Receiver, and Milton Unger, of Counsel with complainant and various creditors of defendant, and the Court having

40 judged the application and relief prayed to be with-



*Order.*

out merit, and having denied the same, it is on this thirteenth day of November, 1928,

ORDERED, that the order to show cause of August 24, 1928, be and the same hereby is set aside and vacated.

Respectfully advised,

10

E. R. WALKER,  
C.

ALONZO CHURCH,  
V. C.

A true copy,  
FERD GARRETSON,  
Clerk.

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**Statement of Distribution by Receiver.****IN CHANCERY OF NEW JERSEY.**

|    |                                                                                  |                                                                                                      |             |                  |
|----|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------|------------------|
| 10 | Between                                                                          | ERWIN GLASER,<br>Complainant,<br>and<br>ACHTEL STETTER'S RESTAURANT, a<br>corporation,<br>Defendant. | }           | On Bill, &c.     |
|    |                                                                                  |                                                                                                      |             |                  |
|    | Balance in hands of Receiver,<br>as per final account                            |                                                                                                      |             | \$4,617.82       |
|    | Received since filing account<br>interest on deposit                             |                                                                                                      |             | 26.31            |
|    |                                                                                  |                                                                                                      |             | <hr/> \$4,644.13 |
| 20 | Disbursements as per order of<br>the Court of Chancery of<br>November 13, 1928.  |                                                                                                      |             |                  |
|    | Services Special Master, Jo-<br>seph G. Wolber, Esq. audit-<br>ing final account | \$                                                                                                   | 100.00      |                  |
|    | Services of Receiver                                                             |                                                                                                      | 2,065.51    |                  |
|    | Services, Counsel for Re-<br>ceiver                                              |                                                                                                      | 2,065.61    |                  |
| 30 | Counsel fee, counsel for com-<br>plainant                                        |                                                                                                      | 413.11      | 4,644.13         |
|    |                                                                                  |                                                                                                      | <hr/>       | <hr/>            |
|    |                                                                                  |                                                                                                      |             | 0                |
|    | Total claims presented to<br>Receiver and allowed by<br>him (General)            | \$                                                                                                   | 20,425.79   |                  |
|    | Priority claims filed and al-<br>lowed                                           |                                                                                                      | 805.70      |                  |
|    |                                                                                  |                                                                                                      | <hr/>       |                  |
| 40 |                                                                                  |                                                                                                      | \$21,231.49 |                  |
|    | Dated: November 16, 1928.                                                        |                                                                                                      |             |                  |

HARRY G. HENDRICKS.



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

|                                                                                                          |                                                |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------|
| ERWIN GLASER,<br>Complainant,                                                                            |                                                |
| and                                                                                                      |                                                |
| ACHTEL-STETTERS RESTAURANT, a<br>Corporation,<br>Defendant.                                              | 10                                             |
| <hr/>                                                                                                    |                                                |
| JUNIOR COMPANY and SENIOR COR-<br>PORATION, Corporations of New<br>Jersey,<br>Appellants,                | On Appeal<br>from the<br>Court of<br>Chancery. |
| vs.                                                                                                      |                                                |
| HARRY G. HENDRICKS, Receiver of<br>ACHTEL-STETTERS RESTAURANT, a<br>Corporation,<br>Appellee-Respondent. | 20                                             |

To THE HONORABLE the Court of Errors and Ap-  
peals in the Last Resort in all Causes;

30

The petition of the Junior Company and Senior  
Corporation, appellees in the above entitled cause  
respectfully shows that:

1. Petitioners find themselves aggrieved by a  
final order made in the Court of Chancery by his  
Honor, Edwin Robert Walker, Chancellor of the  
State of New Jersey, bearing date November 13,  
1928, in a certain cause in the said Court of Chan-

40



*Petition of Appeal.*

10 cery, wherein, Erwin Glaser was Complainant and Achtel-Stetters Restaurant was defendant, in this respect, to wit, that the said order adjudges the exceptions filed to the report of said Receiver are overruled and set aside and that the accounts filed by said Receiver were allowed for his services the sum of Twenty-Five Hundred Dollars (\$2500.00), and that counsel for said Receiver is allowed Twenty-Five Hundred Dollars (\$2500.00), and that counsel for the Complainant is allowed the sum of Five Hundred Dollars (\$500.00), and that said Receiver be discharged from all obligations in relation to his trust, after making payments in accordance with the said order of payment.

20 And your petitioners appeal from the said Order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in the following particulars:

30 ONE: Said order is erroneous for the reason that your petitioners had theretofore filed with the Court exceptions to the Report of the Receiver setting forth in particulars matters wherein Receiver exceeded his authority as set forth in his order of appointment; in that he operated said business at a loss when no power to operate said business was given him; in that he damaged the premises and the interests therein of your petitioners without warrant or justification in fact or in law; in that he unlawfully deprived your petitioners of its property and wasted the premises of your petitioners; in that he violated the rights of your petitioners' interests in said real estate, and unlawfully prevented your petitioners from occupying their property or exercising their rights for same; in

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*Petition of Appeal.*

that Receiver unlawfully refused to pay to your petitioners the rents due them from said Receiver during the period of said Receivership; in that he made improper allowances for rents due upon said premises to your petitioners; in that they refused to allow the claim of your petitioners for rent due from said Receiver for the period of the Receivership, and the claim of your petitioners for rent due from the insolvent estate prior to the appointment of said Receiver. 10

Two: Said order is erroneous in that it is improper to allow to the Receiver an allowance of Twenty-Five Hundred Dollars (\$2500.00), to his counsel an allowance of Twenty-Five Hundred Dollars (\$2500.00), and to his counsel for the Complainant an allowance of Five Hundred Dollars (\$500.00) when the total assets of the estate in the hands of the Receiver amount of \$4644.13 and when the assets of the estate were diminished in the amount of \$1472.56 which sum was lost by the Receivers in their unsuccessful effort to operate the business of the insolvent estate for the period from February 20th, 1928, to February 28th, 1928. 20

Petitioners therefore pray that the said Order of the said Chancellor may be wholly reversed, set aside, and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper. 30

BLANCHARD & CAREY,  
Solicitors for and of Counsel  
with Appellants.



**Petition of Appeal.**

(Filed Dec. 5, 1928)

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

10

---

 ERWIN GLASER,  
 Complainant,

and

 ACHTEL STETTER'S RESTAURANT,  
 a corporation,  
 Defendant.
 

---

20

 JUNIOR COMPANY and SENIOR COR-  
 PORATIONS, Corporations of the  
 State of New Jersey,  
 Appellants,

VS.

 HARRY G. HENDRICKS, Receiver of  
 ACHTEL-STETTERS RESTAURANT, a  
 Corporation,  
 Appellee-Respondent.
 

---

 On Appeal  
 from the  
 Court of  
 Chancery.

30

 TO THE HONORABLE the Court of Errors and  
 Appeals in the Last Resort in all Causes;

The petition of the Junior Company and Senior Corporation, appellants in the above entitled cause, respectfully shows that:

40

1. The petitioners find themselves aggrieved by a final order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 13,



*Petition of Appeal.*

1928, in a certain cause in the said Court of Chancery, wherein, Erwin Glaser was complainant and Achtel-Stetters Restaurant was defendant, in this respect, to wit, that the said order adjudges that an Order to Show Cause entered on August 29, 1928 be set aside and vacated, the said order of August 29, 1928 requiring that Harry G. Hendricks, Esquire, Receiver of Achtel-Stetters Restaurant, appear and show cause before the Court of Chancery why the said Harry G. Hendricks should not be compelled to pay to the petitioners the rents due and owing on the premises known as Nos. 838, 840, 842, 844, and 846 Broad Street, Newark, New Jersey, up to and including April 6, 1928 and why he should not be compelled to turn over to the petitioners the proceeds of the sale of the Chattels thereby further distrained upon by said petitioners and why he should not be compelled to pay to the petitioners the damage arising out of the unlawful sale, removal and destruction by the said Harry G. Hendricks of certain fixtures and parts of the freehold owned by and belonging to the petitioners.

And the petitioners appeal from the Order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in the following particulars:

ONE: Said order is erroneous for the reason that the Junior Company and the Senior Corporation, as landlords, on February 20, 1928 distrained upon the goods and chattels of the defendant lessee, Achtel-Stetters Restaurant, then in and upon premises Nos. 842, 844, and 846 Broad Street., Newark, New Jersey, and for past rent due the Senior Corporation in the amount of \$3635.74 for premises



*Petition of Appeal.*

No. 842 Broad Street, Newark, New Jersey. that subsequent to said distress, Harry G. Hendricks was appointed Receiver by the order of the Court of Chancery, took possession of the premises and of the goods and chattels therein; that the Junior Company and the Senior Corporation demanded of the Receiver the right to perfect their distress by sale; that on February 25, 1928 the Junior Company and the Senior Corporation presented to the Court of Chancery verified petitions praying for rules to show cause why the petitioners should not be permitted to complete and perfect the distress levied by them on the said premises which petitions were denied consideration and which applications for rules to show cause were denied; that your petitioners objected to the sale of the said goods and chattels by the said Receivers; that on the return of a rule to show cause, obtained by the Receiver, directing creditors to show cause why the Receiver should not sell the goods and chattels located upon the premises hereinbefore referred to, your petitioners appeared and objected to said sale by the Receiver on the ground that the same was unnecessary and unwarrantable expense and unreasonable depreciation in the value of the security for the lien of your petitioners' distress, that said sale was ordered and held upon the 29th day of February, 1928 and that without notice to your petitioners said sale was confirmed at a sale price of Fifty-Three Hundred Dollars (\$5300.00), that no other assets remained to the insolvent estate to the knowledge of the Receiver which facts were at no time denied by said Receiver.

Two: Said order is erroneous for the reason that the said Harry G. Hendricks as Receiver oc-



*Petition of Appeal.*

cupied premises Nos. 838 to 846 Broad Street, Newark, New Jersey, for a period from February 20, 1928 to April 6, 1928 inclusive, with full knowledge of the value of said premises and the inability of the said Receiver to pay rent for same; that said Receiver was informed by your petitioners of the value of the said premises by letter, by word and by petition filed by your petitioners with the Court of Chancery on March 1, 1928; that said Receiver was informed by your petitioners that all rights of the insolvent Ahtel-Stetters Restaurant in and to the leases upon said premises had terminated prior to the appointment of the Receiver, and said rights reverted to your petitioners as landlords of said premises; that said Receiver took no action either to abandon said premises or dispose of such leasehold rights as he might claim to have in the insolvent estate until the end of March, 1928; that on March 28, 1928 your petitioners were informed that said Receiver had offered all the leases upon said premises for sale at public auction; that on March 29, 1928 your petitioners presented to the Court of Chancery petitions praying for rules to show cause why the Receiver should not be directed to return full right, title and possession to said premises and the leases thereon to your petitioners that the amount of the Receiver's bond should be increased commensurate with the liabilities and losses which your petitioners were liable to sustain if the action of the Receiver in selling said leaseholds should appear to be unwarrantable and illegal; that said leases were offered for sale and that the leasehold interest in No. 846 Broad Street, Newark, New Jersey, was sold for One Thousand Dollars (\$1000.00); that on April 5, 1928 an order was entered abandoning all claims by the Receiver to



*Petition of Appeal.*

any right, title or interest in or to the premises Nos. 838, 840, 842 and 844 Broad Street, Newark, New Jersey and that the sale of the lease to No. 846 Broad Street, Newark, was confirmed, which facts were at no time denied or controverted by said Receiver.

10       THREE: Said Order is erroneous for the reason that the Receiver damaged and injured the freehold right of your petitioners in and to said premises in that fixtures were torn down and parts of the freehold damaged by the Receivers in dismantling said premises during the conduct of the sale of the goods and chattels thereon located; which facts were at no time denied or controverted by said Receiver.

20       FOUR: Said order is erroneous for the reason that your petitioners have at all times been denied a hearing upon the allegations herein referred to, although such hearing has been repeatedly been sought from the Court of Chancery.

30       FIVE: Said order is erroneous for the reason that in the matters and facts herein set forth there has been a violation of the rights of your petitioners in the premises, your petitioners have been deprived of their property without due process of law, there has been an inequitable exercise of the powers and rights of the Court of Chancery and its Receiver in dealing with the property of your petitioners, and your petitioners have been denied such hearing as they are entitled to by law. All of the application of your petitioners have been supported by affidavits have at no time been denied or contraverted by said Receiver.



*Petition of Appeal.*

Petitioners therefore pray that the said Order of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such relief in the premises as to this Court shall seem proper.

BLANCHARD & CAREY,  
Solicitors for and of 10  
Counsel with Appellants.

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**Answer to Petition of Appeal.**

(Filed Jan. 3, 1929)

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

10

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT,  
a corporation,  
Defendant.

20

JUNIOR COMPANY and SENIOR COR-  
PORATIONS, Corporations of the  
State of New Jersey,  
Appellants,

VS.

HARRY G. HENDRICKS, Receiver of  
ACHTEL-STETTERS RESTAURANT, a  
Corporation,  
Appellee-Respondent.On Appeal  
from the  
Court of  
Chancery.

30

The answer of the above-named Harry G. Hend-  
ricks, Receiver, respondent, to the petitions of  
appeal of the above named appellant.

40

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, never-  
theless, says and admits that a final order was, on  
the 13th day of November, 1928, made and entered  
in the Court of Chancery, in the cause for that pur-  
pose mentioned in the said petition, as is therein



*Answer to Petition of Appeal.*

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 order is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this appellee-respondent.

10

POMEREHNE, LAIBLE & KAUTZ,  
Solicitors and of Counsel with  
Appellee-Respondent.

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**Notice of Appeal.**

(Filed, February 14, 1929.)

**IN CHANCERY OF NEW JERSEY.**

|    |                                                                                                                                                                                                                                                       |   |              |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br><div style="text-align: center; margin: 5px 0;">           ERWIN GLASER,<br/>           Complainant,<br/>           and<br/>           ACHTEL STETTER'S RESTAURANT, a<br/>           corporation,<br/>           Defendant.         </div> | } | On Bill, &c. |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|

20      The Petitioners Exceptions, Junior Company and the Senior Corporation, creditors of the above named defendant, hereby appeal from the Order approving Receiver's accounts and discharging Receiver made in the above entitled cause on November 13, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: Nov. 17, 1928.

BLANCHARD & CAREY,  
Solicitors for and of Counsel with  
the Junior Company and the  
Senior Corporation.

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

ROBERT CAREY, JR.  
Of Counsel with the Junior Com-  
pany and the Senior Corpora-  
tion.

A True Copy.

FERD GARRETSON,  
Clerk.



**Notice of Appeal.**

(Filed Feb. 14, 1929.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT, a  
corporation, &c.,  
Defendant.

On Bill, &amp;c.

10

The Petitioners Exceptants, Junior Company and the Senior Corporation, creditors of the above named defendant, hereby appeal from the Order dismissing and vacating an order to show cause on August 24, 1928 made in the above entitled cause on November 13, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

BLANCHARD & CAREY,  
Solicitors for and of Counsel with  
the Junior Company and the  
Senior Corporation.

Dated, Nov. 17, 1928.

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

30

ROBERT CAREY, JR.  
Of Counsel with the Junior  
Company and the Senior  
Corporation.

A True Copy.

FERD GARRETSON,  
Clerk.

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**Petition.**

(Filed March 9, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                                                                        |   |             |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------|
| 10 | Between<br><div style="text-align: center; margin: 5px 0;">           ERWIN GLASER,<br/>           Complainant,<br/>           and<br/>           ACHEL-STETTER'S RESTAURANT,<br/>           Defendant.         </div> | } | On Bill &c. |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------|

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

20      The petition of Harry G. Hendricks, the Receiver herein appointed for the above-named company, respectfully shows:

1. That the assets of said defendant company consist of chairs, tables, cutlery, dishes, ranges, fixtures and appurtenances to dining rooms and restaurant business conducted by said defendant, including a small stock of cigars, soft drinks and perishable edibles.

30      2. That petitioner is causing to be made a detailed inventory and appraisal of said assets which same is nearing completion and said assets are of the value of \$4,600 as near as petitioner can at the present time ascertain.

3. That the rent of the premises wherein the said assets are situate amounts to \$44,250 per annum, besides taxes payable in addition to said rent,



*Petition.*

amounting to the rate of \$16,845.92 per present annum, and insurance premiums aggregating \$741 per annum, making a total per current annum aggregate of \$61,836.92 from which sum the lessors of the defendant receive and collect from sub-tenants in said premises of \$15,000 per annum, making the defendant corporation chargeable at the rate of \$128.46 per day under its letting of said premises. 10

4. That in addition to said rent, taxes and insurance charges, the defendant is chargeable under one or more of its lettings with the lessors Federal income on said demised premises, the exact terms and conditions of which petitioner has not yet been able to ascertain.

5. That on February 20, 1928, Junior Company, a corporation, lessor of part of the premises occupied by the defendant at 844 Broad Street, Newark, N. J., levied a distress for rent on the goods and chattels of said defendant for the months of January and February, 1928, for the aggregate sum of \$3,055.66. 20

6. That the true rent due for said months is \$2,166.66 and that the said distress levy is \$899 in excess of the true rent. 30

7. That said Junior Company lessor of part of the premises occupied by defendant at 846 Broad Street, Newark, N. J. levied a distress for rent for the months of January and February, 1928, on the goods and chattels of said defendant, in the aggregate sum of \$1,708.20. 40



*Petition.*

8. That the true amount of rent due for said premises for said two months is \$1,166.66 and that said distress levy is \$541.54 in excess of the true rent.

10 9. That Senior Corporation, a corporation, lessor of part of the premises occupied by the defendant at 842 Broad Street, Newark, N. J., levied a distress for rent for the months of January and February, 1928 on the goods and chattels of said defendant in the aggregate sum of \$3,635.74.

10. That the true amount of rent due for said premises for said months is \$2,875.00, and that the said distress levy is \$760.74 in excess of the true rent.

20 Your petitioner charges that said distresses are illegal in that the levies are for greater amounts than the true rent of said premises, and are unreasonable and too great, and in controvention of the statute in such case made and provided, to wit: Compiled Statutes of New Jersey, Volume 2, pages 1939-1946.

30 11. That for the proper protection of said assets it is necessary to maintain a watchman and to have someone in and about the premises continuously, at considerable expense, to meet the requirements of insurance companies and to otherwise guard the said assets against damage, wherefore your petitioner believes that it would be to the interest of various creditors to sell said assets at public sale, to the highest bidder, either as a whole or separately.

40 Your petitioner therefore prays that he may have the advice and direction of this Honorable Court as



*Petition.*

to whether under the circumstances of the case, he shall sell said assets at public or private sale for the best price that can be obtained therefor, and whether he shall sell the same as a whole or in parcels and free from the liens of distress levied against the same as aforesaid, or that he may have such other order as the nature and circumstances of the case may require and as shall be agreeable to equity. 10

And your petitioner as in duty bound will ever pray, etc.

HARRY G. HENDRICKS,  
Petitioner.

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

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

I am the petitioner in the foregoing petition named, and have read the same, and the same is true except as to the matters therein stated to be on information and belief, and as to those matters I believe it to be true. 30

HARRY G. HENDRICKS.

Sworn to and subscribed before me }  
this first day of March, 1928. }

PERRY E. BELFOTTO,  
Master-in-Chancery,  
Of New Jersey. 40



**Order.**

(Filed March 9, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                      |   |              |
|----|------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHTEL-STETTER'S RESTURANT,<br>Defendant. | } | On Bill, &c. |
|----|------------------------------------------------------------------------------------------------------|---|--------------|

20      Upon reading and filing the duly verified petition of Harry G. Hendricks, the Receiver of the above-named defendant company, praying that he may have the advice and direction of this Court as to whether the chattels and assets of said defendant mentioned in said petition should be sold at public or private sale for the best price that can be obtained therefor, and free from the liens for rent distress levied upon said chattels, as described in said petition,

30      It is on this first day of March, 1928, on motion of Pomerehne, Laible & Kautz, of Counsel with the said Receiver,

40      ORDERED, that the stockholders and creditors of Achtel-Stetter's Restaurant, show cause before this Court on Tuesday, the sixth day of March, 1928, at the Chancery Chambers (Industrial Building, 1060 Broad Street, Newark, N. J.), at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon, why said chattels and assets mentioned in said petition, should not be



*Order.*

sold at public or private vendue free from all liens thereon, such liens, if any, to attach to the proceeds.

And it is FURTHER ORDERED, that true copies of this order which need not be certified, be served upon each of the creditors and the registered agent or other officer of said defendant company, and upon Ernest F. Keer, President of the Junior Company and Senior Corporation, mentioned in said petition, by mailing a copy thereof to each of them at their several respective post-office addresses, with postage prepaid thereon, within three days from the date hereof. 10

Respectfully advised,

E. R. WALKER, 20  
C.

ALONZO CHURCH,  
V. C.

30

40



**Order for Sale.**

(Filed March 9, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                       |   |              |
|----|-------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHTEL-STETTER'S RESTAURANT,<br>Defendant. | } | On Bill, &c. |
|----|-------------------------------------------------------------------------------------------------------|---|--------------|

20 This matter being opened to the Court by Pomerehne, Laible & Kautz, of Counsel with Harry G. Hendricks, the Receiver of the above-named defendant company, and due proof being made of the service of the order to show cause heretofore granted

30 herein by mailing true but uncertified copies thereof to each of the creditors and stockholders of the above-named company at their several respective post-office addresses with the postage prepaid thereon within the time directed in said order, and it appearing from the petition heretofore filed in said cause that it would be to the best interest of the various creditors to sell the chattels and assets belonging to the above defendant company, and more particularly mentioned in said petition, and no sufficient cause being shown to the contrary,

It is on this sixth day of March, 1928, on motion of Pomerehne, Laible & Kautz, of Counsel with said Receiver,

ORDERED, ADJUDGED AND DECREED, that the said Receiver be and he is hereby authorized, empowered



*Order for Sale.*

and directed to sell all the right, title and interest in and to all the goods, chattels, assets and appurtenances of said defendant company at public or private sale, for the highest and best price that the same will bring in cash, as an entirety or in parcels at the discretion of the said Receiver, and free and discharged from any and all liens, distresses and distrains for rent levied thereon, such liens, if any, to attach to the proceeds of such sale or sales, as the Court may hereafter determine. 10

Respectfully advised,

E. R. WALKER,  
C.

ALONZO CHURCH,  
V. C.

20

30

40



**Report of Receiver.**

(Filed March 10, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                       |   |               |
|----|-------------------------------------------------------------------------------------------------------|---|---------------|
| 10 | Between<br>ERWIN GLASER,<br>Complainant,<br><br>and<br><br>ACHTEL-STETTER'S RESTAURANT,<br>Defendant. | } | On Bill, &c., |
|----|-------------------------------------------------------------------------------------------------------|---|---------------|

20
In pursuance of an order made by this Court in the above entitled cause, bearing date March 6, 1928, by which it was ORDERED, ADJUDGED AND DECREED that the undersigned Receiver of the above named defendant company, do sell all the right, title and interest in and to all the goods, chattels, assets and appurtenances of said defendant company at public or private sale, for the highest and best price that the same would bring in cash, as an entirety or in parcels at the discretion of said receiver, and free and discharged from any and all liens, distresses and distrains for rent levied thereon, such liens, if any, to attach to the proceeds of
30
such sale or sales, as this Court might thereafter determine, I, Harry G. Hendricks, Receiver as aforesaid, do hereby report to his Honor, the Chancellor, that I did by public advertisements, signed by myself, and set up on the exterior of the premises of the defendant company at 846 Broad Street, in the City of Newark, in this State, and at least three days before the time appointed for selling the said assets, and also caused publication to be made in the Newark Evening News and Newark
40



*Report of Receiver.*

Star-Eagle, newspapers published in said City of Newark, within said time, give public notice that the said assets and effects of said defendant would be exposed for sale at public vendue on Friday, March 9th, 1928, at the hour of ten o'clock in the forenoon, on the premises, and that the same would be struck off to the highest bidder or bidders therefor.

10

That I did on said appointed time expose for sale the fixtures, including kitchen equipment, cutlery, dishes, and other assets and appurtenances of the defendant company, in parcels, and sold the same for the total amount of \$5,910.76.

I then caused the said assets to be offered for sale in bulk, and the highest bid therefor was \$3000.

I thereupon declared the several sales to parcel bidders accepted and the said bulk bid rejected, the said parcel bidders being in the whole the highest bidders.

20

I excepted from the said vendue any and all right, title and interest of the defendant in any leaseholds covering the premises wherein the business of defendant was conducted, on account of not having been able up to this time to determine whether any such right, title or interest had any market value.

30

Respectfully submitted,

HARRY G. HENDRICKS,  
Receiver.

40



**Order Confirming Sale of Assets.**

(Filed March 10, 1928.)

## IN CHANCERY OF NEW JERSEY.

|           |                                                                                                                                          |   |                          |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------|
| <p>10</p> | <p>Between</p> <p style="text-align: center;">ERWIN GLASER,<br/>Complainant,<br/>and<br/>ACHTEL-STETTER'S RESTAURANT,<br/>Defendant.</p> | } | <p>On Bill, &amp;c.,</p> |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------|

20 This matter being opened to the Court by Pomerehne, Laible & Kautz, of Counsel with the Receiver of the above named defendant company, and it appearing by the report of said receiver, that said receiver has sold the entire assets of said defendant company, (excepting only any and all tenancy rights in leaseholds) in separate lots for the aggregate sum of \$5,910.76 and that said sum was the highest and best price the same would bring in cash; and no reason appearing why said sale should not be confirmed:

It is on this 10th day of March, 1928, on motion of Pomerehne, Laible & Kautz,

30 ORDERED, that said sale be in all things confirmed and that the said receiver do proceed to make delivery and conveyance of the said assets sold by him, according to the conditions of said sale, and that said receiver administer the proceeds derived therefrom, to abide the further order of this Court.

Respectfully advised,

E. R. WALKER,  
C.

ALONZO CHURCH,  
V. C.



**Amended Notice of Appeal.**

(Filed March 15, 1929.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL STETTER'S RESTAURANT, a  
corporation,  
Defendant.

On Bill, Etc.

10

The Petitioners Exceptants, Junior Company and the Senior Corporation, creditors of the above-named defendant, hereby appeal from the order approving Receiver's accounts and discharging receiver made by the Chancellor in the above entitled cause on November 13, 1928, on the advice of Vice-Chancellor Alonzo Church, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

Dated, March 7th, 1929.

BLANCHARD & CAREY,  
Solicitors for and of Counsel with  
the Junior Company and the  
Senior Corporation.

30

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

ROBERT CAREY, JR.  
Of Counsel with the Junior  
Company and the Senior  
Corporation.

A True Copy,  
FERD GARRETSON,  
Clerk.

40



**Affidavit of Service of Amended Notice  
of Appeal.**

IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                                                                                                                                            |   |              |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br><div style="text-align: center; margin: 10px 0;">ERWIN GLASER,<br/>Complainant,</div> <div style="text-align: center; margin: 10px 0;">and</div> <div style="text-align: center; margin: 10px 0;">ACHTEL STETTER'S RESTAURANT, a<br/>corporation, &amp;c.,<br/>Defendant.</div> | } | On Bill, &c. |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|

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

20 Robert Carey, Jr. of full age being duly sworn on his oath deposes and says:

I served the attached Amended Notice of Appeal upon Harry Pomerehne, of Pomerehne-Laible-Kautz, Solicitors for the Receiver herein by exhibiting to him the attached original Notice and leaving with him an exact copy thereof at his office at No. 45 Branford Place, in the City of Newark, New Jersey, on Thursday, March 7, 1929 at 3:30 p. m.

ROBERT CAREY, JR.

30 Sworn and subscribed to before me }  
this 7th day of March, 1929. }

ABRAHAM GECHTMAN,  
A Notary Public of State  
of New Jersey.

A True Copy.  
FERD GARRETSON,  
Clerk.

40



**Amended Notice of Appeal.**

(Filed March 15, 1929)

## IN CHANCERY OF NEW JERSEY.

Between:

ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTER'S RESTAURANT, a  
Corporation,  
Defendant.

On Bill, &amp;c.

10

The Petitioners Exceptants, Junior Company and the Senior Corporation, creditors of the above-named defendant, hereby appeal from the Order dismissing and vacating an order to show cause on August 24, 1928, made by the Chancellor in the above entitled cause on November 13, 1928, on the advice of Vice-Chancellor Alonzo Church, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

Dated: March 7th, 1929.

BLANCHARD & CAREY,  
Solicitors for and of Counsel  
with the Junior Company  
and the Senior Corporation.

30

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

ROBERT CAREY, JR.,  
Of Counsel with the Junior  
Company and the Senior  
Corporation.

A true copy.

FERD GARRETSON,  
Clerk.

40



**10**

|           |                                                              |   |                         |
|-----------|--------------------------------------------------------------|---|-------------------------|
| Between : | ERWIN GLASER,                                                | } | <b>On Bill, &amp;c.</b> |
|           | Complainant,                                                 |   |                         |
|           | and                                                          |   |                         |
|           | ACHTEL-STETTER'S RESTAURANT, a<br>Corporation,<br>Defendant. |   |                         |

Robert Carey, Jr., of full age being duly sworn  
20 on his oath deposes and says:

30 ROBERT CAREY, JR.

ABRAHAM GECHTMAN  
A Notary Public of the State  
of New Jersey.

40 FERD GARRETSON,  
Clerk.



**Petition and Report of Receiver.**

(Filed April 10, 1928.)

## IN CHANCERY OF NEW JERSEY.

Between

ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTER'S RESTAURANT,  
Defendant.

On Bill, Etc.

10

TO HIS HONOR, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

The petition of Harry G. Hendricks, the Receiver heretofore appointed for the above named defendant, respectfully shows:

20

1. That he did cause to be published in the Brooklyn Eagle and New York Times, newspapers published respectively in the Borough of Brooklyn and City of New York, and in the Newark Evening News, a newspaper published in the City of Newark, County of Essex, and on Sunday, April 1, 1928, in the Newark Sunday Call, a newspaper published in the City of Newark, County of Essex, display advertisements, advertising for sale on the second day of April, 1928, at the office of Pomerehne, Laible & Kautz, No. 45 Branford Place, Newark, New Jersey, all the right, title and interest in and to leaseholds of the defendant, Achtel-Stetter's Restaurant, which leases are more particularly described in proofs and affidavits of publication hereto annexed and made part hereof.

30

40



*Petition and Report of Receiver.*

2. A large number of persons appeared at the time and place designated for said sale, and examined into said leases.

3. The said leases were then duly offered for sale in bulk, for which no bids were received.

10 4. Petitioner then offered for sale each of said leases separately, and Greenfield Auction Company, Inc., bid the sum of \$1,000 for the right, title and interest of the Receiver in and to the lease covering 846 Broad Street, Newark, N. J.

20 Your petitioner therefore prays that he may have the advice and direction of this Honorable Court as to whether under the circumstances of the case, he shall abandon said leases to the lessors thereof, or that he may have such other order as the nature and circumstances of the case may require and as shall be agreeable to equity.

And your petitioner will ever pray, etc.

HARRY G. HENDRICKS,  
Petitioner.

30

40



*Petition and Report of Receiver.*

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

HARRY G. HENDRICKS, being duly sworn according to law, on his oath says: that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. **10**

HARRY G. HENDRICKS.

Sworn to and subscribed before }  
 me this 3rd day of April, 1928. }

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

**20****30****40**



**Order.**

(Filed April 10, 1928.)

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                                                                                                                              |                 |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 10 | Between<br><div style="text-align: center; margin: 5px 0;">ERWIN GLASER,<br/>Complainant,</div> <div style="text-align: center; margin: 10px 0;">and</div> <div style="text-align: center; margin: 5px 0;">ACHTEL-STETTER'S RESTAURANT,<br/>Defendant.</div> | } On Bill, etc. |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|

20 This matter being opened to the Court by Henry Pomerehne, Solicitor of the Receiver, and it appearing to the Court that the Receiver gave notice to all the creditors of the above named defendant corporation that he would sell at public auction to the highest bidder, at the office of Pomerehne, Laible & Kautz, 45 Branford Place, Newark, N. J. on April 2, 1928 at 10 A. M. leases held by the defendant corporation and covering: 1—Nos. 838-840 Broad Street, Newark, N. J. 2—No. 842 Broad Street, Newark, N. J. 3—No. 844 Broad Street, Newark, N. J. 4—No. 846 Broad Street, Newark

30 N. J. and it appearing by the petition and report of said Receiver that notice of said sale was also published in various newspapers, and that said leases were offered in bulk and no bid was received therefor, and that the same were then offered separately and that Greenfield Auction Company, Inc. offered the sum of \$1,000 for the lease on No. 846 Broad Street, Newark, N. J., and said offer being the highest and best bid and due notice having been given of an application to confirm said sale before

40 the Chancellor, at the Chancery Chambers, 1060



*Order.*

Broad Street, Newark, N. J. on April 3, 1928 at 10 A. M. and the matter coming on to be heard and the Court having heard and considered the same and being of the opinion that it is for the best interests of the said estate that said offer of Greenfield Auction Company, Inc. be accepted.

It is on this 4th day of April, 1928, ORDERED that the sale of the lease covering No. 846 Broad Street, Newark, N. J. to Greenfield Auction Company, Inc. be and the same hereby is confirmed, and the Receiver is hereby authorized and empowered to execute a good and sufficient instrument of transfer for the right, title interest of the Receiver in said lease, upon receipt of the consideration therefor, 10

And it is FURTHER ORDERED that the said Receiver be and he is hereby authorized and empowered to abandon the remainder of said leases and deliver immediate possession to the owner or owners of said premises. 20

Respectfully advised,

E. R. WALKER,  
C.

ALONZO CHURCH,  
V. C.

30

40







**Answer to Petition of Appeal.**

(Filed January 3, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.ERWIN GLASER,  
Complainant,

and

ACHTEL-STETTER'S RESTAURANT,  
a corporation,  
Defendant.

10

JUNIOR COMPANY AND SENIOR COR-  
PORATIONS, corporations of the  
State of New Jersey,  
Appellants,On Appeal  
from the  
Court of  
Chancery.

20

vs.

HARRY G. HENDRICKS, Receiver of  
Achtel-Stetters Restaurant, a  
corporation,  
Appellee-Respondent.

The answer of the above-named Harry G. Hendricks, Receiver, respondent, to the petitions of appeal of the above named appellants.

30

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 a final order was, on the 13th day of November, 1928, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof

40







*Answer to Petition of Appeal.*

this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this appellee-respondent.

POMEREHNE, LAIBLE & KAUTZ,      **10**  
Solicitors and of Counsel with  
Appellee-Respondent.

**20**

**30**

**40**



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## New Jersey Court of Errors and Appeals

|                                                                                                            |                                                |
|------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| ERWIN GLASER,<br>Complainant,                                                                              | On Appeal<br>from the<br>Court of<br>Chancery. |
| and                                                                                                        |                                                |
| ACHTEL-STETTER'S RESTAURANT,<br>a corporation,<br>Defendant.                                               |                                                |
| JUNIOR COMPANY AND SENIOR COR-<br>PORATION, corporations of the<br>State of New Jersey,<br>Appellants,     |                                                |
| vs.                                                                                                        |                                                |
| HARRY G. HENDRICKS, Receiver of<br>Achtel-Stetters Restaurant, a cor-<br>poration,<br>Appellee-Respondent. |                                                |

### BRIEF FOR APPELLANTS.

#### Introduction.

These two companion appeals both grow out of the same general receivership proceedings, are both from orders advised by the same vice-chancellor on the same day and both involve pleadings and affidavits common to each. For this reason, one state of the case has been printed containing all the pleadings and documents necessary to both appeals, and they are both treated in this same brief, an appropriate distinction being employed with respect



to the arguments and authorities applicable to the respective appeals. The statement of facts directly following is generally applicable to both appeals and the statement of the grounds of appeal are separated into the grounds applicable to each distinct appeal.

### Statement of Facts.

Prior to February 20, 1928, Achtel-Stetter's Restaurant, a corporation, conducted a restaurant business at premises #838-846 Broad Street, Newark, New Jersey. On February 20, 1928, it was in arrears for rent to the landlords, the Junior Company and Senior Corporation, appellants, in the following amounts: (See State of Case, p. 11, par. 6, l. 37, &c.)

|                                  |           |
|----------------------------------|-----------|
| Junior Company—844 Broad St.     | \$3065.66 |
| “ “ —846 Broad St.               | 1708.20   |
| Senior Corporation—842 Broad St. | 3635.74   |

The Receivers in their account admit \$6,208.34 of this claim (p. 64).

At nine o'clock in the forenoon on the aforesaid day, the appellants, the landlord, through their duly authorized bailiff, served notice of distress and distrained upon all the personal property in said premises for the rents due appellants. (See State of Case, p. 12, par. 7, l. 14, &c.)

Subsequently, on the same day, on complaint of Erwin Glaser, Harry G. Hendricks, Esquire, was appointed Receiver of the aforementioned restaurant company. (See State of Case, p. 12, par. 8, l. 22; also Order, p. 1.)

Thereafter on February 25, 1928, your appellants presented to Vice-Chancellor Church similar but separate verified petitions for an order to show cause why the receiver should not relinquish con-



trol of the premises and why the petitioners should not be permitted to complete and perfect the distress levied by them on said premises. The petitions were denied consideration, and no Order was allowed thereon. (See State of Case, p. 12, par. 9, l. 33, &c.)

Similar verified petitions were presented to the Court on March 6, 1928, upon the return of an order to show cause why the receiver should not be permitted to sell the goods and chattels so distrained upon by these appellants; the appellants' petitions were denied and an order issued over the objection of the appellants, authorizing the receiver to sell the goods and chattels free from these appellants' distress liens, such liens, if any, to attach to the proceeds of such sale. (See State of Case, p. 13, par. 10, l. 5 and p. 98.)

On March 1st, 1928, these appellants served the receiver with a notice to quit the premises, he then being in default of rent. On March 28, 1928, the appellants being informed that the receiver was about to offer the leases on the premises for sale at public auction, presented similar but separate verified petitions praying for rules to show cause why full right, title and possession to said properties should not be returned to them and why the receiver's bond should not be increased commensurate with probable liabilities, and why the receiver should not be restrained from selling said leases. The petition was denied consideration and no order allowed thereon. (See State of Case, p. 15, par. 14, l. 6, &c.)

Within three days of said application, and on April 1, 1928, there became due and owing from the receiver for the use and occupation of the premises, the following amounts:



Junior Company—844 Broad Street \$ 973.76

“ “ —846 Broad Street 1045.31

Senior Corporation—842 Broad Street 2006.33

(See State of Case, p. 14, par. 13, l. 31, &c.)

The receiver had no assets to pay this rent charge and no prospect whatever of obtaining such moneys. The business had ceased and the stock and chattels had been sold. Nothing remained.

A sale of the leases was held and a bid of \$1,000.00 for the lease on #846 Broad Street was received. On April 3, 1928 (State of Case, p. 15, par. 15) Vice-Chancellor Church advised the confirmation of the sale over the objection of the appellants (State of Case, p. 15, par. 16) and the other premises were then abandoned by the Receiver and subsequently re-occupied by the landlords.

Thereafter on August 29, 1928, appellants presented a verified joint petition to Vice-Chancellor Backes for an order to show cause why the receiver should not be compelled to pay rents for his occupancy of the premises #838-40-42-44 and 846 Broad Street, Newark, in the total amount of \$8284.00; (State of Case, p. 34, par. 35, l. 26, &c., and pp. 38 and 39); why he should not be compelled to turn over the proceeds of the sale of the chattels theretofore distrained upon by the petitioners and sold by the receiver; and why he should not be compelled to pay to these appellants damages arising out of the unlawful sale, removal and destruction of certain fixtures attached to and being part of the freehold owned by the appellants. (See State of Case, p. 31, par. 15, l. 5, &c.)

This order to show cause was issued on August 29, 1928. (See State of Case, p. 42.) The return of the Order was adjourned from time to time and was brought on for argument before Vice-Chancel-



lor Church. Although affidavits filed by the appellants herein were undenied, the appellants were denied a hearing on the matters placed in issue by the order to show cause entered at the date aforesaid, and an Order was entered November 13, 1928, denying them any relief, which Order is the first Order appealed from. (See State of Case, p. 76.)

The receiver filed an account, verified on October 13, 1928. (See State of Case, p. 46.) The account was presented to the Court for confirmation on an Order to Show Cause dated October 16, 1928. (See p. 65.)

The receiver's account showed total assets of \$4616.82; (see p. 51) and the Order to Show Cause contained a notice to the appellants that the receiver asked as his allowance \$2500.00, the sum of \$2500.00 for his counsel and \$500 for counsel for complainant.

On October 29, 1928, your appellants jointly filed exceptions to the account (p. 68) objecting thereto on the following six separate and distinct grounds (p. 68); which are recapitulated as follows:

ONE: They except to the removal by the Receiver of the furniture and fixtures upon the premises Nos. 838-846 Broad Street, Newark, on the ground of hazard and danger, allege that the premises were in a safe and satisfactory condition on February 20, 1928 when the Receiver took possession, and that such action was waste on the part of the receivers.

Two: They except to the expenditure of \$5519.64 by the Receiver in the operation of the business of the defendant from February 20th, 1928 to February 28th, 1928 at a loss of \$1472.56 and contrary to the power vested in the receivers under their order of appointment.



THREE: They except to the failure and refusal of the Receiver to abandon the leases to the premises occupied by the defendant to the Exceptants forthwith in view of the fact that same were cancelled and that no rights under said leases reside in the Receiver. They except further to the offer for sale and the sale of the leases to premises No. 846 Broad Street, Newark, on the ground that the receiver had no right or title in said lease and that same was done to the great injury of your exceptants; they except to the failure of the receiver to recognize the verified petitions and affidavits filed by your exceptants with this court of claims for rent due to your exceptants from the defendant prior to the Receivership; and they except further to the Receiver's failure to allow said claims in their entire amount as set forth in said petition and affidavits and as evidenced by the distress levied upon the said property prior to the Receivership, inasmuch as the said sum so claimed by your exceptants were in exact accordance with leasing agreements entered into between your exceptants and the defendant corporation.

FOUR: They except to the action of the Receivers in holding possession of the premises 838 to 844 Broad Street, Newark, New Jersey, until the 6th day of April, 1928 on the alleged ground that such retention of possession was necessary to protect other assets of the insolvent estate, especially in view of the fact that all other assets were sold on March 1, 1928, and were immediately thereafter removed from the said premises; they except to the expenditure by the Receiver of \$1729.00 for advertising and other expenses as being a grossly excessive and unreasonable exercise of judgment on the part of the Receiver in view of the value and character of the assets in the Receiver's hands.



FIVE: They except to the failure of the Receiver to allow the claim of your exceptants for rent due your exceptants from the Receiver for the period of the Receiver's occupancy of the premises in the amounts demanded by your exceptants.

SIX: They except to the deduction by the Receiver from the rent due from the Receiver to your exceptant, the Junior Company, of the sum of \$1890.60 being the rental for two stores on premises Nos. 838 to 840 Broad Street, Newark, New Jersey, inasmuch as the subleases to said stores are the property of Ernest F. Keer, an individual, acquired by the said Ernest F. Keer by assignment prior to the incorporation of the defendant, Achtel-Stetter's Restaurant, and in no way concerning the liability of Achtel-Stetter's Restaurant to the landlord for the rent of the entire premises 838 to 840 Broad Street, Newark, New Jersey.

On the return of the order to show cause why the accounts should not be allowed and approved and why fees and allowances should not be fixed and determined and why rent due by the Receiver for use and occupation should not be ascertained and why the Receiver should not be discharged from his trust, appellants orally presented objections to the account and allowances and requested a reference of the account and the exceptions thereto to a Master to take testimony thereon. The substance of the exceptions was not denied.

The application for reference and the opportunity to examine into the merits of the account were denied and an order was entered approving the account and discharging the Receiver, on the 13th day of November, 1928 (See State of Case, p. 77). This order is the second order appealed from.



### **Grounds of Appeal.**

#### **A. THE GROUNDS OF APPEAL FROM THE ORDER OF NOVEMBER 13, 1928, DISMISSING THE ORDER TO SHOW CAUSE OF AUGUST 29, 1928:**

1. The Court erred in denying a hearing on the petitioners' (appellants') application to have the proceeds realized from the sale of the chattels distrained upon turned over to the landlords in the amount of and in satisfaction of the lien of the landlords for rent accruing prior to the receivership; and it erred in refusing to order the return of proceeds to the said landlords.

2. The Court erred in denying a hearing on why the Receiver should not pay the rent owing during the occupancy of the premises by the Receiver, and it erred in not ordering that the Receiver should pay for his occupancy thereof.

3. The Court erred in not allowing a hearing on the damages caused the petitioners (appellants) by the Receiver's sale and destruction of part of the freehold and it erred in not ordering the receiver to make restitution to these appellants.

4. The Court erred in denying a hearing on the Order to Show Cause in view of the fact that the Court repeatedly refused to grant to the petitioners (appellants) a hearing of the issues therein involved upon prior petitions.

5. The Order appealed from was a deprivation of the appellants' property without due process of law.

6. The Order appealed from was an improper and inequitable exercise of the power and discretion of the Court of Chancery.



B. THE GROUNDS OF APPEAL FROM THE ORDER OF NOVEMBER 13, 1928, CONFIRMING THE FINAL ACCOUNT OF THE RECEIVER:

1. The Court erred in awarding an allowance of \$2500.00 for the receiver, \$2500.00 for the receiver's counsel and \$500.00 for the complainant's counsel.

2. The Court erred in making any allowance to the Receiver before and without giving any consideration to the liability of the Receiver to the appellants for rent during the receivership.

3. The Court erred in disposing of all of the assets of the receivership without and before allowing a hearing upon the charges filed with the Court as to the liability of the Receiver for tortious conduct during the receivership.

4. The Court erred in denying a hearing of the exceptions of the receiver's account.

5. The Court erred in denying a hearing on the amount of rent due from the receiver to the landlords and in confirming the Receiver's account before the amount of rent owed by the Receiver was determined.

**Argument.**

A. THE ORDER OF NOVEMBER 13, 1928, DISMISSING THE ORDER TO SHOW CAUSE OF AUGUST 29, 1928.

1. The Court erred in denying a hearing on the petitioners' (appellants') application to have the proceeds realized from the sale of the chattels distrained upon turned over to the landlords in the amount of and in satisfaction of the lien of the land-



lords for rent accruing prior to the receivership; and it erred in refusing to order the return of proceeds to the said landlords.

The Receiver has never denied that the distress was actually made prior to the filing of the application for a receiver and has never gone further than to suggest that it was in an excessive amount. The Court denied your appellants any opportunity to offer evidence other than by affidavit in support of their contentions as to the validity of the distress and in the face of these facts retained, but did not file appellants' petitions and denied appellants an order to show cause. Subsequently, the receiver offered the chattels for sale pursuant to an order of the court (p. 98) and over the strenuous and repeated objections of the appellants.

The levy of the distress, it is submitted, perfected the landlords' lien for rent upon all the goods so distrained upon. *The Landlord & Tenant Act at Section 4, provides:*

"That no goods or chattels whatsoever, lying or being, or which shall lie or be in or upon any measure, lands or tenements, which are, or shall be leased for term of life or lives, year or years, at will or otherwise, shall be liable to be taken, by virtue of any execution, attachment or other process, unless the party at whose suit the said execution or other process is sued out, shall, before the removal of such goods from off the said premises, by virtue of such process, pay to the landlord of the said premises, or his bailiff, all rent due for the said premises, at the time of the taking such goods or chattels by virtue of such process, or which shall have accrued up to the day of the removal of the goods from off the said premises, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum, the time of payment of which, by the terms of the lease shall not have come."



Justice Depew discussed the rights of the landlord in the case of *Woodside v. Adams*, 40 N. J. Law, 417, wherein he stated that:

"A Landlord has no lien on the goods and chattels of his tenant for the payment of his rent, except such as is given by the statute. As against an officer seizing under execution, attachment, or other process against the tenant, he may claim all rent due, not exceeding one year's rent, which shall have accrued before the removal of the goods from off the premises. He may also subject goods and chattels, the property of the tenant, to distress and sale as a means of obtaining satisfaction for his rent; but his lien under the warrant to distrain will relate to the time of actual seizure under the process of distress \* \* \*."

The words "or other process" in the Landlord and Tenant Act have been held to be applicable to an order of a Court of Chancery respecting Receivers. This is set forth in the case of *Wood v. McCordell Carriage Co.*, 49 Equity, 433, where the Court said:

"The petitioner rests his case upon the fourth section of the act respecting landlords and tenants (Rev., p. 510), which provides that no goods and chattels being upon any lands or tenements which are or shall be leased, shall be liable to be taken by virtue of any execution, attachment or other process, unless the party at whose suit the said execution or other process is issued out shall, before the removal of such goods from off the said premises, pay to the landlord all rent due for said premises not exceeding one year's rent. There can be no room for doubt that the order of this court directing the receiver to take possession of the goods and chattels of the defendant company, is included in the phrase, 'other process'. An execution commands the officer



to seize and sell the goods of a defendant. The only difference is in form and name; the result in both cases is precisely the same. Upon the argument it was considered important that the landlord had not secured a lien or taken any steps to that end. This, I think, is not essential to his protection in cases where the tenant has not disposed of his goods, or as between himself and another, created a valid lien. While the statute leaves the tenant at perfect liberty to dispose of his goods and chattels absolutely, or to create liens thereupon, yet as between landlord and tenant and other creditors of the tenant, when such creditors come with any process whatsoever, the statute is his shield. It absolutely forbids the removal of his goods until the rent then due, not exceeding one year, is paid. Although the landlord has no lien by which he can enforce the payment of rent, but must institute proceedings in his own behalf in order to accomplish that, the law preserves to him, as against every other process, the retention of the goods upon the premises until his rent is paid."

Thus it will be seen that regardless of the Landlord's distress the courts have held that the landlord's claim for rent is paramount to any right of the Receiver in the premises. The case of *In re Westside Paper Co.*, 164 Fed. 110, is an application of the same principle to a bankruptcy proceeding. There the Court held the right of the distraining landlord superior to the right of the trustee in bankruptcy on the same grounds herein set forth.

The preference created by Section 4 of the Landlord and Tenant Act does not in itself create a lien, since the tenant at all times could alienate his goods by chattel mortgage or otherwise, but whenever the goods and chattels are sought to be taken "by execution, attachment, or other process", then the Act operated to protect the landlord. Justice



White quoted *Wood v. McCardell Carriage Co.* with approval in *Franz Realty Co. v. Welsh*, 86 N. J. Equity 288, stating that this ruling had been universally accepted as the settled law of the State. The further discussion in that case as to the lien of employees for wages is not involved in the present case whatsoever, in view of the fact that the landlords in this case have perfected their lien by distress, not relying solely upon the protection afforded them by the Landlord and Tenant Act.

Thus it will be seen that the lien of the landlords is established and it is submitted that they should not be deprived of any portion of their security but that the full amount realized by the Receiver upon the sale of the assets, already referred to, should have been forthwith turned over to them.

It cannot be the policy of the Court of Chancery to appoint its own officers solely for their own benefit and advantage and to the disadvantage of a secured creditor of this character. Such a practice would in effect be a confiscation of the property of a citizen by the State by an officer of the State. In the present case it will be apparent that the assets of this estate were limited solely to these goods and chattels upon which your petitioners held their lien. As to these goods no receiver was necessary as no equity remained in them available for distribution by a receiver to other creditors. The rent due was approximately \$8400.00 (p. 20) and the goods were worth no more than \$5500.00 (p. 53). No duties were rendered by the Receiver to the advantage of the landlords by the receiver's interference with the landlords' efforts to perfect his distress. For this reason, alone, it is submitted that the proceeds of the sale of those goods should be returned to the landlords in the full amount realized at the sale. Any further assets claimed by the Receiver and from which he might realize funds



for the estate may well be looked to for the Receiver's compensation or the complaining creditor might well be called upon for this purpose for reasons, which we will hereinafter set forth, but there is no equitable ground upon which an innocent landlord, hostile to the appointment of a Receiver and vigorously opposing any sale by a Receiver of the very assets upon which his lien for rent rests, should be called upon to contribute to the support or maintenance of some individual appointed by the Court of Chancery on the application of a creditor in full possession of all the facts and conditions relating both to the landlords' claim and the debtor's responsibility.

It may be contended that under the recent ruling of the Courts of this State in the case of *Seidler v. Branford Restaurant*, 97 New Jersey Equity 153, 531, the fund realized by the Receiver's sale should be drawn upon to reimburse the Receiver and that for this reason the fund in the present case should be held by the Court until the Receiver's allowance should have been determined and that amount deducted from the fund. It must be pointed out, however, that the claim of the chattel mortgagee in the *Seidler v. Branford Restaurant* case was weakened by the consent of the chattel mortgagee to the sale by the Receiver. In fact the chattel mortgagee himself was the purchaser at the Receiver's sale. To apply that ruling to the present case, in the face of the landlords' opposition to the control of the distrained goods by the Receiver, would be inequitable, confiscatory, unwarranted by precedent and against natural justice. No benefit, whatsoever, would accrue to anyone but the Receiver or possibly the complaining creditor, who in Equity would assume the natural expenses and costs of his own action. If the ruling of the *Seidler v. Bran-*



*ford Restaurant* case were to be extended to the case of a landlord an unconscienable creditor having no hope of payment for himself, as in the present case, might, if hostile to the landlord, seek the appointment of a Receiver out of his own malice and thus deprive the landlord of any payments in satisfaction of his just lien claim.

However, we would emphasize the fact that in the case of *Seidler v. Branford Restaurant*, the mortgagee not only consented to the sale but even purchased the mortgaged goods himself and that he relied merely on his mortgage lien, whereas, in the present case the landlord is protected by a definite piece of legislation designed to protect the landlord even against Receivers, as was clearly pointed out by Vice-Chancellor Bird in the case of *Wood v. McCardell Carriage Co.*, *supra*.

We submit that the foregoing is dispositive of the right of the landlord to the Fifty-Two Hundred Dollars (\$5200.00) realized at the sale of the articles distrained upon by the landlords' bailiff. Even were this not so, however, the general principles of Equity are opposed to depriving the innocent and objecting lien-holder of the substance of his security merely to pay a Receiver's fee or charges. The complaining creditor cannot seek the appointment of a Receiver to satisfy a mere whim, knowing at the time of his application that no portion of the estate will be available to him for dividends, and knowing further that the estate is actually insufficient to satisfy the claim of the lien-holder alone. Such complainant must bear the consequences of his act and must satisfy the costs which his own actions have occasioned. To quote from the opinion of the Chancellor in *Central Trust Savings v. Chester County Electric Co.*, 80 Atlantic 801, a 1911 Delaware case arising on application of a Receiver for



allowances, the court cited with approval the case of *Lammon v. Giles*, a Washington case to the following effect:

"A mortgagee of personal property not more than sufficient to pay his debt is the only one who needs to borrow trouble about its preservation. If one interferes with it officiously under the plea that he has rights therein but inferior to those of the mortgagee, which require the sequestration of the property, he ought to pay all the expenses of such interference, if it turn out that the property is insufficient, after satisfying the mortgage to do so. The same Court also said that a receiver should not be appointed where the property was no more than sufficient to pay the mortgage debt."

Even in the New Jersey case of *Lembeck v. Jarvis*, 68 Equity, 352, a case in which Receiver's fees were allowed to be deducted out of the corpus upon which the mortgagee held his lien, the court held that the suit was practically a mortgage suit for the collection of the mortgagee's debt with his consent, the mortgagee electing to permit the Receiver to collect rather than to start a separate action of his own. Vice-Chancellor Stevenson said:

"In this case not one dollar of compensation is allowed out of the fund of the receiver or to his counsel which was not earned in the care and sale of the mortgaged property. \* \* \*

"Where the insolvency Receiver has had other assets besides those found to be subject to the mortgage, the effort, of course, should be to make each class, the encumbrancers, and the general creditors, pay for the services of which it derived the benefit."

The Court erred in denying a hearing on why the Receiver should not pay the rent owing during the occupancy of the premises by the receiver, and it



erred in not ordering that the Receiver should pay for his occupancy thereof.

The Receiver took complete possession and control of the premises on February 20, 1924 and retained such possession until April 4, 1928 (pp. 19-23). He was frequently asked to quit the premises (p. 22, l. 12) and application was made to the Court to compel the receiver to hand over the premises to the landlords (p. 32, ll. 30 *et seq.*). An order to show cause was refused upon the presentation of the verified petition. The receiver refused to quit the premises although admitting his inability to pay rent to the landlord for his use and occupation (p. 22, l. 12). The receiver at all times denied to the landlords any rights in the premises with respect to the leaseholds and on or about March 28, 1928 advertised for the sale of these leaseholds (pp. 108-109) notwithstanding the fact that no use was made of the empty buildings since February 28, 1928. The sale of the leaseholds was held on April 1, 1928, and the premises on 846 Broad Street, Newark, was sold to the Greenfield Auction Company, the Court ordering the sale as to 846 Broad Street confirmed and ordered the remaining leases to be abandoned to the owners of the premises on April 4, 1928 (pp. 110-111).

|                                                |          |
|------------------------------------------------|----------|
| Up to April 1st, 1928, the Receiver owed       |          |
| To the Junior Company for 844 Broad Street     | \$973.76 |
| To the Junior Company for 846 Broad Street     | 1045.31  |
| To the Senior Corporation for 842 Broad Street | 2006.33. |

Since the receiver claimed to hold under the leases there accrued an additional month's rent payable to appellants for the month of April as offflows:



|                                               |           |
|-----------------------------------------------|-----------|
| To the Junior Company for 844 Broad<br>Street | \$2412.39 |
|-----------------------------------------------|-----------|

|                                                   |         |
|---------------------------------------------------|---------|
| To the Senior Corporation for 842 Broad<br>Street | 1832.37 |
|---------------------------------------------------|---------|

making a total to the Junior Company of \$4431.46 and a total to the Senior Corporation of \$3838.70—Total \$8270.16 (see p. 21). Under these circumstances the receiver was clearly liable for rent.

Admitting that a receiver has reasonable time to elect to assume a lease, in the present case, he did make such election as his efforts to sell the leases clearly indicate. He could not sell what was not his to sell and by the same token he could not offer to sell what he did not claim to be his to sell.

“The general rule has become established by the weight of authority that he may retain possession for a reasonable time to enable him to determine whether he will adopt the lease, and that he may thus become liable to pay rent according to the covenant in the lease.” *Vol. 34, CYC.*, page 263.

In the present case, the appellants submitted to the Court that the receiver had no right to assume the leases for which he could not pay and requested a return of the leases both from the Court and from the Receiver. The Receiver's refusal to return the premises was a further confirmation of his election to keep the leases and treat them as his own. It was within the sound discretion of the Court to order a return of the leases when it was apparent that no funds were available to the receiver to pay for his use and occupation. *Fleming v. Fleming*, 69 Equity, 715. The Court however, declined to enter an order with respect to that application.

It is submitted that the Receivers, once having assumed the leases placed themselves in the position of the original lessee and should, as an expense



of their administration, be liable and held responsible for arrearages of rent as well as for rent during their use and occupation. *United States Trust Company v. Wabash Railway*, 150 U. S. 287; *Dietrich vs. O'Brien*, 89 Atlantic, 717.

In this last case, the Court held that a Receiver upon his adoption of a lease bound himself to the payment of the rent as stipulated in the lease. "It must not be lost sight of" said the Court, "that the receiver is simply an arm of the Court to assist in winding up the affairs of the insolvent and to protect the interest of the creditors". The Court was of the opinion that when the Receiver adopted the lease, he became liable on all the covenants of the lease up to the end of the term thereof.

That the receiver is liable for his use and occupancy is supported by the numerous authorities collected in *Smith on Receiverships*, Section 121.

The Court erred in not allowing a hearing on the damages caused the petitioners (appellants) by the Receiver's sale and by his destruction of part of the freehold and it erred in not ordering the Receiver to make restitution to these appellants.

The receivers in dismantling the premises for the sale of the chattels destroyed much of the freehold. They dismantled, tore out and sold a large heating plant, securely and permanently built into the structure of the building; they knocked down and removed the partitions and wainscoting and paneling; they tore out and removed lighting fixtures, a permanently installed ice freezing machine and other items all of which were permanently built into the premises to enhance its value and usefulness as a restaurant (p. 31). None of this has ever been denied by the Receiver. In fact, the Receiver freely admits these charges (p. 47) in his final report and attempts to justify them upon the ground that his destructive activity was a safety measure in



premises totally unoccupied and, by his destructiveness, rendered unfit for occupancy. The Receiver did these things notwithstanding his purporting to have assumed a lease under the terms of which he had no power or right whatsoever to alter the condition of the premises in any particular. It is submitted that in all equity and justice these appellants should have at least been entitled to a hearing and the opportunity to offer evidence other than by affidavit to support their charges of spoliation of the freehold.

Premises Nos. 844 and 846 Broad Street, Newark, New Jersey, consist of one separate and distinct red brick store building, their being a separate chain of title on both No. 844 and No. 846 Broad Street. The two chains of titles were united in the common owner, the Junior Company. After the premises had been altered and constructed so as to be one definite physical unit, this building together with Nos. 842, 840, 838 Broad Street, Newark, New Jersey, had been leased for restaurant purposes for a long period of years and the entire character and construction of the interior of all these premises has been designed for that purpose. The rear of Nos. 842, 844 and 846 Broad Street, Newark, New Jersey, has been one large room used as a restaurant kitchen, there being no partitions or separations therein. Two-thirds of the way towards the rear of the building in No. 846 Broad Street is a solid brick wall, which was originally the rear wall of the building to which was added an extension to be used as the kitchen.

From this destruction of the furnishings and the removal of partitions, it will be readily seen that this action on the part of the receiver makes it impossible for the landlords to again lease the entire premises as a unit for the purposes for which it was originally designed. This will of necessity require



adjustments and changes in the rest of the premises on the part of the landlord, which will be very costly and speculative in their nature.

It is submitted that this use of the appellants' property clearly deprived them of their property without due process of law, was inequitable and an abuse of discretion on the part of the Court of Chancery.

*The order of November 13, 1928, confirming the final account of the Receiver:*

The Court erred in awarding an allowance of \$2500.00 for the receiver, \$2500.00 for the receiver's counsel and \$500.00 for the complainant's counsel.

The receiver reports a final balance of \$4617.82. He then asked \$2500.00 for himself and \$2500.00 for his counsel. The Solicitor for the complainant asks \$500.00. With the exception of the rent charges, all the other expenses of the receivership incurred during the receivership were paid in advance of the filing of the receiver's accounts (p. 59). \$590.00 was paid to an auctioneer for performing practically the only real item of work done in connection with the receivership. \$500.00 was paid to an auditor and \$300.00 to appraisers, and yet not one cent is provided to pay the landlords for the use and occupation of their premises by the receiver. The receiver himself admits that he owes at least \$3506.16 to the appellants for rent during his occupancy (p. 63). Notwithstanding these facts frequently urged upon the Court by petitions and orally by the appellants, an order was entered by Vice-Chancellor Church granting the allowances to the receiver, his solicitor and the solicitor for the complainant in the full amounts as requested and in a total sum exceeding the entire assets in the receiver's hands by \$882.00.

This same Vice-Chancellor in the case of *Bock v. The Columbia Brewing Company*, 99 N. J. Equity,



617, took a radically different view of substantially the same circumstances. To quote Vice-Chancellor Church in that case:

"This is an application for allowances to counsel and receivers in the matter of the dissolution of the Columbia Brewing Company.

This was subsidiary of the New Jersey Refrigerating Company, and its stock was owned by the refrigerating company. In the winding up of the affairs of that company, it became necessary to appoint receivers for the subsidiary company in order that its assets might be sold and turned over to the parent corporation.

I appointed the same receivers whom I had appointed in the matter of the refrigerating company. They sold the property for \$56,000., taking a small payment in cash and a purchase-money mortgage of \$42,000.

The receivers ask for \$2,500. each and counsel for \$5,000. and they have submitted statements which, in their opinion, justify these allowances. It should be noted that the amount asked for, \$10,000., is nearly eighteen per cent of the corpus of the estate.

While I have no doubt that the receivers and their counsel did excellent work and sold the property to the best advantage, I believe such a percentage of the estate for allowances is excessive. Consideration must be given, not only to the work done, but to the quantum of the estate. *Unger v. Newlin Haines Co.*, 95 N. J. Eq. 16.

I will allow the receivers \$1,000. each and counsel \$2,500."

The Vice-Chancellor cannot have been correct in both views and we respectfully submit that the decision in the *Bock* case is more in keeping with Equity and justice than is the treatment accorded your appellants in the present case. It is submitted that the liability of the receiver to pay his entire rent bill should have precedence over any allowance



made to him or his solicitor out of the funds of this estate. Normally the receiver is entitled to his compensation before other claims are paid, but the receiver is a representative of the Court; the Court should be particularly zealous that no reflection be cast upon it through the behavior of its officer and certainly its officer should be the last person in the world to be free from the application of equitable principles.

In the present case, the receiver kept an innocent landlord out of the possession of his property well knowing that no benefit could accrue to the estate by this usurpation of property—that the receiver paid his other expenses, and then, apparently fearing there would be insufficient funds remaining to satisfy his generous estimate of the value of his own services, paid nothing to the landlord whose property he had occupied for some months and presented a request for an allowance in excess of the entire assets of the estate. We respectfully submit that under these circumstances, the Court erred in refusing to grant us a hearing upon the exceptions filed with respect to this receiver's allowances and that the allowances awarded were excessive.

The Court erred in disposing of all of the assets of the receivership without and before allowing a hearing upon the charges filed with the Court as to the liability of the Receiver for tortious conduct during the receivership.

The question of the receiver's tortious conduct was raised in both orders appealed from. The principle that a receiver is liable for his own torts is well established. In the present case, as we have already pointed out, the receiver dismantled the premises, tore down various partitions, fixtures, walls and other portions of the freehold in violation of his rights as a receiver, and in violation of his powers under the lease through which he pur-



ported to hold possession. Our application for permission to sue the receiver at law was made to the Court of Chancery. That Court advised us that it did assume jurisdiction over the charges made against its own receiver. We then presented the petitions hereinbefore referred to and an order to show cause was made returnable both on the application to hold the receiver for his tortious conduct as well as in the matter of the exceptions of the receiver's count. *Palys vs. Jewett*, 32 N. J. Equity 302.

In this case, Chief Justice Beasley pointed out that in order to sue a receiver, the permission to do so must first be obtained from the Court of Chancery. That application having been denied in the present case, your appellants were left to the relief available to them in the Court of Chancery itself. On the return of the rule to show cause granted on August 29, 1928 and again in the matter of the exceptions which were dismissed in the order of November 13, 1928, your appellants were denied an opportunity of establishing the liability of the receiver for his tortious conduct. *Vanderbilt vs. Central R. R.*, 43 N. J. Eq. 369, holds that the liability of the receiver for his tort must be satisfied from the fund in his possession—"Such a receiver is not exempt from liability to answer for injury inflicted by the wrong doing or negligence of those he employs in operating the railroad. Yet the liability is not a personal one, but only falls on the receiver as the representative of the property and fund managed by the court, and damages recovered for such injuries are to be thus collected. Yet upon such liability no suit can be brought except by leave of the court which appointed the receiver. Such leave, however, cannot be denied, unless the claim appears manifestly unfounded and vexatious. *Palys v. Jewett*, 5 Stew Eq. 302; *Little v. Dusenberry*, 17 Vr. 614."



Therefore, clearly the Court erred in the present case in dissipating this entire fund as a reward to the receiver for his management of the estate before permitting a hearing upon the charges made against this same receiver's management.

The Court erred in denying a hearing on the amount of rent due from the receiver to the landlords and in confirming the Receiver's account before the amount of rent owed by the Receiver was determined for the reasons heretofore presented. Wherefore, your appellants respectfully submit that the orders of November 13, 1928 should be reversed, set aside and for nothing holden, and that the matters and issues brought before this Court on these appeals should be referred back to the Court of Chancery for the purpose of having testimony taken and hearings held with respect to the matters and controversies raised in such applications.

ROBERT CAREY, JR.,  
Solicitor for and of  
Counsel with Appellants.







## New Jersey Court of Errors and Appeals

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ERWIN GLASER,  
*Complainant,*

and

ACHTEL-STETTERS RESTAURANT,  
a corporation,  
*Defendant.*

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JUNIOR COMPANY and SENIOR  
CORPORATION, corporations of  
the State of New Jersey,  
*Appellants,*

*vs.*

HARRY G. HENDRICKS, Receiver  
of Achtel-Stetters Restaurant,  
a corporation,  
*Appellee-Respondent.*

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On Appeal from the  
Court of Chancery.

### BRIEF OF APPELLEE-RESPONDENT.

#### Statement.

The receiver duly appointed in above cause, found himself in possession of a well known old established restaurant, with several lodge rooms and banquet halls, conducted in conjunction with the restaurant and known as a landmark in the City of Newark.

The receiver conducted the business therein for a period from his appointment February 20, 1928, to February 27, 1929, in an endeavor to dispose of



said business, if possible, as a going concern. Finding himself unable to dispose of said business as a going concern he closed the place and on March 1, 1929, made report to the Court of Chancery asking the advice and direction of said court regarding the sale of the assets of said corporation (State of Case, pp. 92 to 95).

An order made March 1, 1928, directed stockholders and creditors to show cause why said assets should not be sold at public or private sale free from all liens, such liens, if any, to attach to the proceeds (State of Case, p. 96).

An order of March 6, 1928, directed the receiver to sell all right, title and interest in all goods, chattels, assets and appurtenances of defendant corporation at public or private sale, as an entirety or in parcels, at the discretion of the receiver, free and discharged of all liens, distresses and distraints for rent levied thereon, such liens, if any, to attach to the proceeds of such sale or sales as the Court might thereafter determine (State of Case, p. 98).

### **Argument.**

In brief, the appellants, the Junior Company and Senior Corporation, complain that they have been aggrieved by two orders of the Court of Chancery of New Jersey advised by Vice-Chancellor CHURCH. One of them is dated November 13, 1928, dismissing an order to show cause made on August 29, 1928. The other is an order of November 13, 1928, confirming the final account of the receiver.

It is proper to deal with them separately.

### **The Order of November 13, 1928.**

The appellants say that the Court denied them a hearing on their application to have the proceeds realized from the sale of chattels distrained



upon, turned over to the landlord, and in denying them a hearing on why the receiver should not pay rent and in not allowing a hearing on damages caused by the receiver's sale and not directing restitution.

It appears from the State of the Case, page 8, that on April 14, 1928, the Court made an order which recited that the receiver had given notice to the creditors of the defendant corporation that he would sell at public auction three leases covering 838-840 Broad Street, 842 Broad Street and 844-846 Broad Street, Newark, N. J., and that upon said sale \$1,000 was realized for the lease at 846 Broad Street. The order further recites that the Court heard and considered the application to confirm the sale, and that it ordered that it be confirmed and that the receiver execute a good and sufficient instrument of transfer for *the right, title and interest of the receiver in the lease*, and that he abandon the remainder of the leases and deliver possession to the owners of the premises.

It will be observed that this order was made on April 4, 1928, and that there was no opposition by the appellants to the making of the order and no opposition to confirmation before the Vice-Chancellor. After the order was made and on April 7, 1928 (Case, 10) the appellants filed a petition in which they set up that they levied a distress upon the premises on February 28, 1928, upon which day the receiver was appointed, and further set up (p. 15) that one of the leases was sold to Greenfield Auction Company; that confirmation was granted over the objection of the petitioner. (There is nothing in the order of confirmation to show that the petitioners appeared in opposition thereto.) The petition further recites (Case, 16) that the order confirmed the sale only to 846 Broad Street and abandoned the remaining premises. It



then recites that on the day when the order confirming the sale was signed, the Greenfield Auction Company entered the premises by means of keys given by the solicitor of the complainant, and proceeded to demolish the interior, and that this action was unlawful because no title passed under the sale to the purchaser, and the petitioners asked (Case, 17-18) that this sale should be set aside and the lease returned to the petitioners; that the proceeds of the sale of the goods should be turned over; that the bond of the receiver be increased and that a restraint be entered against the Greenfield Auction Company, and that the latter be ordered to repair the premises.

Upon this petition the Court made an order to show cause, returnable on April 17, 1928, why the receiver and the Greenfield Auction Company should not turn back the premises and the Auction Company was ordered to cease and desist from any destruction in the meantime.

Now, it is perfectly apparent from this order and from the recital in the petition that all the receiver made sale of was his right, title and interest in one lease at No. 846 Broad Street, Newark, N. J., and that he abandoned the other leases and did no more than to turn over possession to the purchaser of the premises covered by the lease which was sold.

It is also apparent that whatever acts of trespass or damage or destruction thereafter took place, the same were chargeable not to the receiver, but to the Greenfield Auction Company which entered, if the petitioners were right, unlawfully, and after entry trespassed or committed waste. If either of these charges were true, the appropriate remedy by the landlord was either an action against the Auction Company for a forcible entry and detainer or for trespass at law. The receiver was no



longer in possession and made no claim to possession.

But it appears, nevertheless, that although the appellants, as hereinbefore stated, obtained an order to show cause on April 7, 1928 (Case, 24), they did not proceed with the hearing thereon, probably because they had ascertained in the meantime that there was no merit in the petition.

The next step taken by the appellants was almost five months later when on August 29, 1928, they filed a petition in the Court of Chancery (Case, 27). In this they set up the ownership of the leases on the premises, the accruing of rent, the levying of a distress, the appointment of a receiver by the Court; their application to the Court to complete their distress, allegations that the receiver had damaged the premises to the extent of \$10,000; that the receiver had been in possession up to April 25, 1928; that the leases were offered for sale at auction, and that one of them was sold in utter disregard of the rights of petitioners; that the sale was confirmed; that the receiver had not paid his rent.

And they pray that the receiver be ordered to pay rent; that he turn over the proceeds of the sale of goods distrained upon; that he show cause why he should not pay for damages.

It will be observed that this petition incorporates therein practically all of the allegations contained in the first petition hereinabove mentioned and embellishes the story somewhat, but at all events on August 9, 1928, the Court, upon the advice of Vice-Chancellor Backes, made an order (Case, 42) directing the receiver to show cause why he should not pay rent; turn over the proceeds of the sale of goods; pay damages, etc. In the preamble to this order, it is to be noted that the Court who advised the same is made to say *that practically*



*all of the allegations of the petition chronologically set forth in the order to show cause, are true.* Of course, the Court could not so find without a hearing or without evidence and we contend that it is clearly apparent that this was intended to be an order to show cause only; that the proper way would have been to have the order state that it appeared from the petition that these things were alleged, etc., etc.

Finally, however, on November 13, 1928, Vice-Chancellor Church made an order (Case, 76) reciting the application of August 29, 1928, to compel the receiver to pay rent, to compel him to turn over the proceeds of sale, to compel him to pay damages arising out of an alleged unlawful sale and further reciting the argument of the matter by counsel for the appellants, by counsel of the receiver and by counsel of the complainants and various creditors. And this order states that the Court having considered the whole application and having adjudged the application for relief prayed *to be without merit* and having denied the same, the order of August 24, 1928, was set aside and vacated. This amounted to a discharge of the rule to show cause. The appellants do not appear to have taken any evidence before the Court to substantiate their position or any depositions in support of it or to send up any arguments from which this Court could find that the Vice-Chancellor was wrong in making the order which he advised on November 13, 1928.

It must have been apparent to the Vice-Chancellor that the application and the relief prayed for was without merit or he would not have stated it in the order, and in the absence of evidence to the contrary, it must be assumed that the order was made upon competent proof of the existence of the findings therein contained. As a practical mat-



ter, the Court had no right to do any of the things which the appellants asked it to do, viz.:

1. Compel the receiver to pay rent. (This was a matter for final accounting.)

2. Compel the receiver to turn over the proceeds of sale. (This was also a matter for final accounting.)

3. Compel the receiver to pay for damages. (This, as hereinbefore pointed out, was not committed by the receiver.) This disposes of the order of November 13, 1928, which disposes of the order to show cause of August 29, 1928.

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ORDER OF NOVEMBER 13, 1928, CONFIRMING THE  
FINAL ACCOUNT OF THE RECEIVER.

The matter appears to have lain dormant until the receiver filed his final petition, report and account. This was done on October 16, 1928, and showed receipts of \$10,754.15, disbursements of \$6,136.33 with a balance on hand of \$4,617.82. The Court on that day (Case, 65) made an order reciting the presentation of this account and the fact that the receiver owed the landlord rent, the amount of which was disputed; that the receiver wanted his account passed; and his fees, and that of his counsel fixed and determined, and the Court made an order on October 16, 1928, directing the creditors and the appellants to show cause why the account should not be approved, the fees determined, the rent determined, distribution directed and the estate divided. The usual provision for the mailing of notice to creditors and the appointment of Joseph G. Wolber, Special Master, to audit the account was contained therein. On the return of the account, the appellants filed six exceptions (Case, 68), viz.:



1. They excepted to the removal by the receiver of furniture and fixtures from the premises, and complained that the receiver had no power to alter or change the condition of the premises.

This was precisely one of the points raised by the previous petition and had been determined against their contention and was, therefore, a mere repetition of charges which had been theretofore determined.

2. They excepted to the receiver's expenditures, claiming that he ran the business at a loss.

It was proper to file such an exception, if it could be established.

3. They excepted to the action of the receiver in his refusal to abandon the premises and in selling the leases.

This exception related to acts of the receiver which had already formed the subject-matter of the previous petition and order and had been determined adversely to the exceptants.

4. They excepted to the action of the receiver in holding possession of the premises.

This had already been disposed of by the previous order.

5. They excepted to the failure of the receiver to allow their claim for rent in the amount claimed by them.

This was a matter upon which they could have asked for a hearing before the receiver and if aggrieved thereby, could have appealed under the Corporation Act (Section 38, General Corporation Act, P. L. 1913, 410).

6. They excepted to the deduction by the receiver of certain rents.

This was practically included with the fifth exception.



Now, it is apparent that the appellants did not take any depositions or oral testimony with respect to these exceptions and made no effort to do so. Nor is there anything in the record to show that the exceptions should have been sustained, but on the contrary, the Court made an order (Case, 73), reciting the filing of the account; the audit by the Special Master, and the argument by counsel for the appellants, by counsel for the receiver, by counsel for the complainant, and the due consideration of the Court and the order overrules the exceptions and confirms the receiver's account. It directs the payment to the receiver of \$2,500, to his counsel \$2,500 and to counsel for the complainant the sum of \$500, as well as \$100 to Joseph G. Wolber, the Special Master.

There is no evidence to show that the Court acted erroneously or improperly or illegally. The findings of the Court must be presumed, in the absence of evidence to the contrary, to have been made upon competent evidence.

In their petition of appeal and in their grounds of appeal, the appellants state that they did not get a hearing, but the orders recite they did and it is a fact that there were hearings. The outcome of the hearings may not have been entirely to the liking of the appellants, but nevertheless they were hearings, although the Court did not agree with their contentions for the most part.

They also say that the Court erred in not ordering the receiver to make restitution to the appellants, but the receiver had not destroyed anything. In fact in the original petition (Case, 16-17) the appellants say that the *Greenfield Auction Company* entered the premises and proceeded to demolish and destroy the interior and make no claim that the receiver did this.



Also cited among the grounds of appeal is the alleged error of the Court in awarding counsel fees and receiver's fees, but no evidence was introduced that these fees were more than what the services were reasonably worth.

The grounds of appeal are for the most part argumentative and contain charges easily to be made, but in nowise supported by the proofs.

We are bound to say that we consider the appellants endeavored to harass the receiver and that their objections were for the most part frivolous, designed for the purpose of harassing the receiver and we do not mind saying that we believe the Court was fully aware of their evident design.

It will be noticed that although both notices of appeal appear to have been dated November 17, 1928 (Case, 90-91), they were never filed until February 14, 1929. An amended notice of appeal was given on March 7, 1929, filed March 15, 1929. We mention this because the notice of November 17, 1928, appears never to have been proceeded on and in the meantime, as a matter of fact, the estate has been distributed.

### Law.

Vice-Chancellor Church, in *Seidler v. Branford Restaurant, Inc.*, 97 N. J. Equity, page 153, said, that

"When a Court of Equity takes possession of property for the purpose of protecting and preserving it for the benefit of the parties interested, the costs of administration are entitled to priority of payment, regardless of the nature of the liens and claims thereon of the litigants.

"The expenses of the administration of a receivership are entitled to priority in payment over a chattel mortgage covering the goods in the receiver's hands."



Numerous cases were cited to support the decision in that case and Vice-Chancellor Church pertinently observed that if a receiver was not paid a reasonable and proper allowance, the Court would not be able to protect its appointees, who become officers of the Court, on their appointment, and entitled to the Court's protection.

This decision was evidently appealed from and the opinion of the Court of Errors is reported in 97 <sup>N. J. Eq.</sup> Law, 531. It was there held that the general expenses of a receivership are payable out of the funds in a receiver's hands prior to the payment of a mortgage debt. This opinion is likewise supported by the citation of unquestioned authority.

In *Rielly v. P. Rielly & Son*, 101 N. J. Equity, page 432, Vice-Chancellor Backes said that the receiver's duty is to exercise ordinary care and prudence and to deal as faithfully with the assets as he would with his own, and that more than that is not demanded by law.

In that case the Court points out that the receiver was hopeful that a sale would eventually come to pass and he adopted a reasonable method of protecting the estate. He says that although it resulted in disappointment, the receiver is to be commended but not condemned.

A similar situation exists in the case at bar.

The Achtel-Stetters Restaurants were old institutions, almost landmarks, on Broad Street, Newark, N. J. The leases held by the defendant corporation covered a large frontage on the street. The property was in the heart of Newark and extremely valuable. The receiver had no right to surrender these leases as demanded by the landlord. The leases themselves contained no clause making them void or inoperative upon the appointment of a receiver. It was the receiver's duty



to sell them and get as much as possible from the sale; that he failed to sell three of them and received but \$1,000 for the fourth was no fault of the receiver's. On the contrary, it is entirely likely that had the receiver acceded to the request to surrender all of the leases to the landlord without an attempt to market them, he would have been confronted with a storm of angry creditors who would have complained that the best part of the estate was sacrificed. He pursued the other course and practically all of the difficulty in the case grows out of the fact that the purchaser of the lease, Greenfield Auction Company, seems to have incurred the displeasure of the landlord in putting the premises to certain uses.

This, however, was not the fault of or chargeable to the receiver.

The ultimate relief sought by the appellants is that the proceedings be remanded to the Court of Chancery so that the appellants may have another hearing on the matters raised by the appeal. The appellants wholly overlook the fact that they have already had one hearing—already had their day in court. Their story has been related and their contention has been decided adversely to them on the evidence they put forth. Now, although they have had this hearing, they complain that it is not due process.

### Argument.

Appellants, on page 10 of their brief, cite The Landlord & Tenant Act, Section 4, providing for payment of rent before removal of goods under execution attachment or other process.

We do not dispute the correctness of the finding in *Woodside v. Adams*, 40 N. J. Eq. 417, cited by appellants, but direct attention to the later case of



*Franz Realty Co. v. Walsh*, 86 N. J. Eq. 228 (Errors and Appeals, 1916), on page 230, quote:

"The Landlords and Tenants Act was passed in 1877, whereas the act giving this preference to the employee's wages for two months was passed subsequently in 1892, and afterwards substantially copied into sections 83 and 84 of the 1896 revision of the corporation act. If, therefore, the corporation act contains a provision inconsistent with a provision of the Landlords and Tenants Act, the latter must be construed as modified or repealed by implication to the extent of such inconsistency. This is particularly so where, as here, the impliedly repealing provision is contained in an act about which Mr. Justice GARRISON, speaking for this Court, in *Massy v. Camden and Trenton Railway Co.*, 78 N. J. Eq. 539, quoting with approval the language of Vice-Chancellor Van Fleet in *Merseriau v. Merseriau Company*, 51 N. J. Eq. 382, said: 'The statute of 1892 covers the whole subject-matter embraced by the prior law, with an additional highly important provision, and was obviously designed to take its place and stand as its substitute. Section 83 of this (the corporation) act provides that in case of the insolvency of any corporation its employees and workmen shall have a first and prior lien upon its assets for wages for two months prior to the institution of the insolvency proceedings, and section 84 provides that such lien shall be *prior to all other liens which can be or may be acquired* upon or against such assets, except the lien of all chattel mortgages which have been given and recorded more than two months preceding the date of the institution of the insolvency proceedings, \* \* \*"

Following the reasoning in the *Franz Realty* case (*ibid.*) our Court of Errors again applies the point in the case of *Bliss v. Linden Cemetery Assn.*, 91 Equity 329, decided in March, 1920. On note: *Per Curiam.*



"The only question raised relates solely to the priority of payment of allowances awarded to the receiver, the amount of which is not questioned, for operating expenses, services and counsel fees out of moneys, collected in two ways—first, by sales of lots, pursuant to the cemetery scheme, under which the receiver has operated the cemetery as a going concern; secondly, out of the proceeds of sale of land of the insolvent cemetery corporation to a railroad company. The scheme, as noted in previous reports of this litigation (*Bliss v. Cemetery Assn.*, 85 Eq. 501, S. C. 89 N. J. Eq. 192) involved a reservation of ten per cent. on gross proceeds of sales, and appellants claimed before Vice-Chancellor Backes, who advised the order now before us, that they were entitled to a vendor's lien which should be held prior to the expense of operating and of the receivership. The Vice-Chancellor rejected this claim, and rightly so. The well settled rule touching expenses of receivership of an insolvent corporation, is laid down by statute in section 85 of the corporation act which provides that 'before distribution of the assets of an insolvent corporation among the creditors and stockholders, the Court of Chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the cost of the proceedings in said court to be first paid out of said assets.'

"And the next section clearly indicates that such allowance precedes all liens, special and general, upon the funds of the corporation."

Section 86 of the Corporation Act, Compiled Statutes of N. J., Vol. 2, page 1652, provides:

"after the payment of all allowances, expenses and costs, and then the satisfaction of all Special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, \* \* \*."



We cannot contend that a lawful distress does not create a lien prior to certain other creditors, but do contend that the Court of Chancery could not determine priorities until the filing of the receiver's final report, particularly since the aggregate of the distress for rent exceeded the amount realized by the receiver on sale of the chattels distrained, and such distress lien abated to the priority of receiver's compensation, counsel fees and costs.

A distress warrant issued by a landlord to his bailiff was entirely a personal proceeding at common law; arose out of the early feudal conception of self-help, and stands the sole surviving relic in modern statutory law of the absolutism incident to the ancient feudal doctrine governing land teumes. The landlord possessed only an exceptional privilege conferred by ancient law and recognized by statute of seizing and selling within a limited period, the goods of his tenant found upon the demised premises. *Commercial Credit Co. v. Vines*, 98 N. J. L. 376, page 378.

In *Jeffers v. N. J. & Penn. R. R. Co.*, 86 Eq. 68, affirmed Court of Errors and Appeals, 86 Eq. 402: An order of the Chancellor authorized a receiver of railroad property to issue certificates of indebtedness, which should be a first lien "in preference to any mortgage, judgment or other liens or claims—Held that the allowance to the receiver and his counsel had priority over such certificates which in turn had priority over claims for operating expenses."

At page 74 (Vice-Chancellor Howell):

The reasoning upon which all these cases go seems to be that the court which appoints the receiver takes into its custody the property of the insolvent company for administration for the benefit of all concerned, receiver and unsecured



creditors and stockholders, and that it can hardly be expected that persons will be found to act as such receivers or as counsel in case there could be any doubt about their compensation or reimbursement for expenses. Bottom page 75: "I therefore think that on both principle and authority the compensation of the receiver and his counsel and the expenses of the receivership must be first paid out of the fund in the receiver's possession."

*Vanderbilt v. Central R. R. Co.*, 43 Eq. page 682 (Errors and Appeals):

"Without other express authority it is plain that for the proper performance of the duties thus imposed on the court, and to be performed by its officer, the latter must take charge of all the property of the corporation, and so manage and preserve it as to enable it to be disposed of most advantageously. With respect to the property of ordinary corporations, this duty can be fully performed by merely storing, insuring and otherwise guarding the property and preserving its value until a sale can be judiciously made. Ordinarily, as was well observed by the Vice-Chancellor, there is no necessity or propriety in continuing the business of such corporations, and an early conversion of their assets into money, and its distribution among the creditors is the plan of wisdom. But if the business of an insolvent railroad be arrested and its operations stopped, it is clear that its property would not be preserved in a condition likely to realize its full value. On the contrary, a cessation of its business would be fatal to the interests of all concerned.

"In the absence of any express enactment, it seems to me the legislation which gives authority to deal with and convert into money such property must be held to give, by implication, all needful authority to so run the road as to preserve its traffic and connections.



"The duty imposed requires the road to be so managed that, when ready to be disposed of, the lessee or purchaser will acquire, not merely the road-bed, rails, locomotives and cars, but a going concern actually engaged in business. This view of a receiver's powers and duties was taken by the Supreme Court of the United States, *Barton v. Barbour*, 104 U. S. 126; *Wallace v. Loomis*, 97 U. S. 146."

*Seidler v. Branford Restaurant*, 97 N. J. Eq. 153, at page 154:

Query: Are the expenses of administration entitled to priority in payment over the chattel mortgage?

Sections 85-86 of the Corporation Act provides as follows:

"Before the distribution of assets of an insolvent corporation among the creditors or stockholders, the court of chancery shall allow a reasonable compensation to the Receiver for his services and the costs and expenses of the administration of his trust, and the costs of proceedings in said court, to be first paid out of said assets.

"After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, excepting mortgage and judgment creditors, when the judgment has not been by confession for the purpose of preferring creditors."

This case was affirmed by the Court of Errors and Appeals March 16, 1925, in 97 Equity, page 531, at page 534, which says:

"High, in his treatise on receivers (pp. 961-962), states the rule to be that 'the costs of the appointment of the receiver are entitled to priority of payment out of the fund realized



by him before all other demands, and the costs of receivership are properly given a preference over prior liens, although the appointment of the receiver was made without prejudice to prior liens.’”

At page 535:

“Assuming that the conduct of the business by the receiver may not, in this particular case, have operated beneficially (though in the opinion filed by the Vice-Chancellor the converse is stated to be the fact) it would be unfortunate indeed if the rule were that an officer of the court, acting under its direction, is dependent for his expenses and compensation on the success or failure in a commercial sense of his efforts in carrying out the order of the court. 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 under 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 expense and perform the duties of the receivership at the risk of these expenses and services being beneficial or otherwise to the estate or to anyone of the parties in interest would be contrary to the whole theory of his office, deprive the courts of services in many cases of competent administration, and be subversive of the administration of this important branch of equity jurisdiction.”

*Attorney General v. Linden Cemetery*, 90 Eq. 404, affirmed *Errors and Appeals*, 91 E. 329, Vice-Chancellor Backes said:

“The rule is thoroughly settled that when a court of equity takes possession of property for the purpose of protecting and preserving



it for the benefit of the parties interested, the costs of administration are entitled to priority of payment, regardless of the nature of the liens and claims thereon of the litigants. This is so fundamental to the administration of justice and so generally recognized that citation of authority is unnecessary."

*Bankers Trust Co. v. Maxson*, 100 Eq. 14, citing *Branford Rest.* case, says:

"By the Chancellor:

"That the recent cases in this State (*Seider v. Branford Rest. Co., Inc.*, 97 Eq. 153, affirmed 97 Eq. 53; *Greenbaum v. Lafayette & Broad realty Co.*, 97 Eq. 536) have established beyond question that the expenses of a receivership under our corporation act, are entitled to priority over mortgages and other liens, special and general, though such mortgages and liens were subsisting and valid when the receiver was appointed.

"And this liability is not restricted to the terms of our corporation act for the Court of Errors and Appeals in *Seidler v. Branford* held that these expenses are entitled to priority, both under *general principles* of equity and under the corporation act, even if the mortgagee was not benefited by the receivership.

"To deny the receiver compensation and expenses on the ground of lack of timely claim therefor, would be for the court to withhold payment of accounts which it had authorized by his appointment and by certain orders it had made; besides, it would disregard the law, a thing not to be contemplated."

To use the words of this Court in *McGann v. Le Brecque*, 91 New Jersey Equity, 305 (quoting Mr. Justice BREWER in *Pittsburg Ry. v. Backus*, 154 U. S. 421, 427):

"If a single hearing is not due process, doubling it will not make it so."



It is therefore respectfully submitted that  
the orders appealed from should be affirmed  
or the appeals dismissed.

Respectfully submitted,

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On the Brief,  
HENRY POMEREHNE.



