

# INDEX

	PAGE
Notice of Appeal .....	1
Petition of Appeal .....	3
Order Appealed From .....	6
Master's Report .....	9
Petition for Rule to Show Cause—November 9, 1923 .....	13
Order Continuing Receiver—November 19, 1923 .....	19
Petition for Rule to Show Cause—November 23, 1923 .....	22
Notice Issued by Receiver .....	28
Petition for Rule to Show Cause—December 3, 1923 .....	30
Agreement—December 12, 1923 .....	36
Order for Possession .....	41
Notice—July 3, 1924 .....	44
Order—July 8, 1924 .....	47
Notice—July 30, 1924 .....	49
Order—July 31, 1924 .....	50
Notice—August 12, 1924 .....	53
Petition of Louis S. Shane .....	55
Affidavit of Louis S. Shane.....	61
Affidavit of James D. Carpenter, Jr.....	62
Exhibit "A" .....	67
Exhibit "B" .....	72
Exhibit "C" .....	74
Exhibit 1 .....	76
Exhibit 2 .....	78
Petition—August 15, 1924 .....	80
Order—August 15, 1924 .....	83
Affidavit of Service .....	85
Order—August 22, 1924 .....	86
Order—September 2, 1924 .....	88
Order—September 4, 1924 .....	90
Order of Continuance—September 8, 1924.	92
Affidavit of Service .....	95

	PAGE
Order of Continuance—September 18, 1924	96
Order for Hearing .....	98
Answer of Louis S. Shane .....	99
Answer of Lakewood Trust Company.....	106
Order of Continuance—February 5, 1925..	109
Order of Continuance—July 14, 1925.....	110
Order of Reference .....	112
Designation .....	113
Memorandum of Vice-Chancellor .....	116

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed May 25, 1925.

**In Chancery of New Jersey**

<i>Between</i>		10
LAKWOOD TRUST COMPANY, <i>Complainant,</i>	}	
<i>and</i>		
LAWSHANE COMPANY, INC., <i>et al.,</i>		54/763.
<i>Defendants.</i>		<i>On Bill, &amp;c.</i>
_____		<i>Notice of</i>
WALLACH & BEHREND Co., INC.,	}	<i>Appeal.</i>
<i>Complainant,</i>		54/518.
<i>and</i>		20
LAWSHANE COMPANY, INC., <i>Defendants.</i>		

To: MESSRS. FURST & FURST,  
Solicitors of Complainant,  
Wallach & Behrend Co., Inc., and other  
creditors. 30

Robert H. McCarter, Esq., of counsel with  
Lakewood Trust Company.

John S. Applegate, Jr., Esq., receiver.

TAKE NOTICE that Louis S. Shane does hereby  
appeal to the New Jersey Court of Errors and  
Appels, in the last resort in all causes, from the  
whole and every part of the order made by the  
Chancellor on the advice of Vice-Chancellor

*Notice of Appeal.*

Church, in the above-entitled causes, on March 24, 1926.

Dated: June 1, 1926.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel with Appellant.

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I conceive there are good grounds for appeal in the above-entitled causes.

JAMES D. CARPENTER, JR.  
Of Counsel.

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*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed June 9, 1926.

**New Jersey Court of Errors and Appeals**

<p><i>Between</i></p> <p>LAKWOOD TRUST COMPANY, <i>Complainant-Appellee,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>et al.,</i></p> <p style="text-align: center;"><i>Defendants-Appellees,</i></p> <p>LOUIS S. SHANE, <i>Appellant.</i></p>	<p>54/763. <i>On Appeal from Chancery.</i></p>	<p>10</p>
<p>WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: center;"><i>Complainant-Appellee,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>Defendants-Appellees,</i></p> <p>LOUIS S. SHANE, <i>Appellant.</i></p>	<p><i>Petition of Appeal.</i></p> <p>54/518.</p>	<p>20</p>
<p style="text-align: center;"><i>Appellant.</i></p>		<p>30</p>

The petition of LOUIS S. SHANE, the appellant in the above-entitled cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey (advised by Hon. Alonzo Church), bearing date the 24th day of March, 1926, in two certain causes which were by order of the said Chancellor consoli-

*Petition of Appeal.*

dated, in one of which the Lakewood Trust Company was complainant and Lawshane Company, Inc., and others were defendants, and in the other of which Wallach & Behrend Co., Inc., was complainant and Lawshane Company, Inc., was defendant (this appellant, however, not being a party to either of said causes), in the following respects, to wit:

(1) That the said order adjudges and decrees that appellant be and he hereby is directed to pay to John S. Applegate, Jr., Receiver of Lawshane Company, Inc., the sum of \$19,370.32, within ten days from the date of said order.

(2) In that the said order or decree attempts to adjudicate that there were \$19,370.32 profits produced from the operation of the Elisberg Hotel at Lakewood, while being operated under an agreement dated December 12, 1923, whereas no hearing was ever held for the purpose of determining what were the net profits from the operation of said hotel under said agreement, and the said figure was merely obtained from an auditor's report of an examination of the books of the said appellant, and the appellant was denied an opportunity to prove what the net earnings of the said hotel under said agreement were and what was done with the said net earnings.

(3) Because neither the said Receiver nor anyone else has any lawful right to any of the profits from the operation of the said hotel under the agreement made December 12, 1923, and the Court was without jurisdiction to order the appellant to pay any of the profits which may have been made by him in the operation of the hotel

*Petition of Appeal.*

under the agreement of December 12, 1923, to the said John S. Applegate, Jr., Receiver, or to any other person.

(4) Because the appellant, Louis S. Shane, was not a party to either of the above-entitled causes, was not served with process in either of said causes, despite which facts the Court below attempted to exercise jurisdiction over the appellant and made the order appealed from without according to the appellant a hearing on the merits thereby depriving the appellant of property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Federal Constitution. 10

(5) Because the Court below did not have jurisdiction over said Louis S. Shane for the purpose lawfully of making the order or decree of March 24, 1926. 20

Your petitioner therefore prays that the said order or decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet.

McDERMOTT, ENRIGHT & CARPENTER, 30  
Solicitors for and of Counsel with Appellant.

*Order Appealed From.*

**ORDER APPEALED FROM.**

Filed March 24, 1926.

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAKEWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

*On Bill, etc.*

*Order.*

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WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,

*Defendant.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend, Inc., and John S. Applegate, Jr., the Receiver herein; and it appearing that Louis S. Shane has operated the hotel of the defendant company located at Lakewood, New Jersey, pursuant to an agreement made and entered into on December 12, 1923, by and between the Lakewood Trust Company, George W. Lawrence and the Lawshane Company, Inc., and Louis S. Shane; and it appearing that the operation of the said hotel by the said Louis S. Shane produced a profit of \$19,370.32; and it appearing that an order was made by the Court herein on July 31,

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*Order Appealed From.* •

1924, directing the Lakewood Trust Company and the said Louis S. Shane to account to the Receiver herein for the operation of the hotel; and it further appearing that an order was made herein directing Louis S. Shane and the Lakewood Trust Company to pay any and all sums of money received by them from the operation of the said hotel; and it further appearing that an order was made herein directed to the said Louis S. Shane and the Lakewood Trust Company to show cause why an order should not be made directing the said Louis S. Shane and the Lakewood Trust Company to comply with the said order made herein on July 31, 1924; and it appearing that the said Louis S. Shane appeared by McDermott, Enright & Carpenter, specially, for the purpose of setting aside the order of July 31, 1924; and it now appearing that the said Louis S. Shane appears generally and has waived the said special appearance; and after hearing James D. Carpenter, Jr., of McDermott, Enright & Carpenter, attorneys for the said Louis S. Shane; and Robert H. McCarter, of McCarter & English, and Halsted H. Wainright, attorneys for the Lakewood Trust Company; and George Furst, of Furst & Furst, attorneys aforesaid; it is on this 24th day of March, 1926, on motion of Furst & Furst, attorneys aforesaid,

ORDERED, That Louis S. Shane be, and he is hereby directed to pay to John S. Applegate, Jr., the Receiver herein, the sum of \$19,370.32 within ten days from the date of this order, to

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*Order Appealed From.*

be held by said Receiver subject to the adjudication by this Court as to who is entitled thereto.

EDWIN ROBERT WALKER,  
C.

Respectfully advised,

10 ALONZO CHURCH,  
V.-C.

I hereby consent to the entry of the foregoing order.

ROBERT H. McCARTER,  
Counsel for the Lakewood Trust Company.

A true copy.

20 FURST & FURST.

30

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*Master's Report.*

**MASTER'S REPORT.**

(Filed November 2, 1923.)

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	<i>On Bill to</i>	10
LAKEWOOD TRUST COMPANY,		<i>Foreclose.</i>	
<i>Complainant,</i>		<i>On Petition</i>	
<i>and</i>		<i>for Receiver.</i>	
LAWSHANE COMPANY, <i>et als.,</i>	<i>Master's</i>		
<i>Defendants.</i>	<i>Report.</i>		

To Honorable John E. Foster, Vice-Chancellor:

Pursuant to your directions, I attended at Isenberg Hotel, Lakewood, New Jersey, upon the 29th instant, at 2:00 o'clock P. M. Accompanying me was George W. Sewing, building contractor and carpenter. There attended at the same time and place, representing the other parties, Halsted H. Wainright, Esq.; Dr. Lawrence and Mr. Daggart. 20

There were also present two or three employees of the hotel, who apparently were acting as caretakers and watchmen. 30

The hotel was built about four years ago. We inspected it from roof to cellar. The roof is in bad condition. East, west and main roof leak badly. The present covering is tar paper. The foundations of the hotel have settled considerably, so that the roofs which formerly had sufficient grade to throw off the water are now flat and the water remains in puddles, leaking down and through the hollow tile partitions, and the flashings of the skylights, of which there are 40

*Master's Report.*

several, and thereby reaching many parts and sections of the hotel from the top floor to the cellar. The leaks on main roof also in part are due to cracked coping, the water seeping through and on down into the building.

10 In many instances the partition laths have rotted from the leaks. This was true in many rooms and halls. Leaks were found in ballroom and in spots the plaster had fallen. It was partly in course of repair. Bar-room, so called, off ballroom, showed result of leaks; was partly replastered. Ceiling mostly down. Some repairs had been made. Housekeeper's room, fourth sleeping floor, part of ceiling had fallen and had been repaired recently. On the third  
20 sleeping floor there were leaks, and ceiling in places was down. Had been partly replastered. I visited many of the rooms on all the floors and found in many instances evidences of bad leaks. Same is true of walls on main stair platforms.

The roof over kitchen and pantry in practically the same condition as upper roofs. Roof covering insufficient. Skylights leak.

The band stand ceiling had fallen due to leaks. Main dining-room ceiling showed effect of leaks  
30 from roof, and was patched. A space of some five feet long and three feet wide had fallen. Other spots loose, ready to fall. The ceiling of this room is more or less elaborate and after being replastered will require repainting and re-decorating. Pantry ceiling in bad condition, result of leaks. Kitchen ceiling showed leaks. Air-shaft roof over laundry same. Bakeshop ceiling requires new plaster and painting. Same is true as to the servants' dining-room.

*Master's Report.*

The estimated expense of repairing east, west and upper roofs and making a permanent job of them is \$1,500.00, replacing present covering with slag, pointing up coping and repairing skylight, flashings, &c.

To put the ceilings and walls in proper condition throughout the hotel, in my judgment, will cost at least \$2,500.00, so that a total cost of repairs made necessary through leaks, which includes roofs, patching, painting and redecorating, \$4,000.00. 10

The hotel in its main construction is improperly built. The foundations are not sufficient to carry its weight, with the result that the entire building, generally speaking, has settled in different degrees, causing considerable damage. There are probably two hundred bedroom doors throughout the hotel out of plumb due to settling of building, making necessary, to make a good job, the removal of the jams and the splicing thereof. Window frames are likewise, but not to the same extent, out of square. A wooden addition to the hotel known as garbage room will have to be jacked up and refastened to the hotel building, due to settling of hotel. 20

The one elevator in the building cannot be operated for two reasons: First, because of the settling of the building, the elevator runs not being true, and secondly, because of the kind of motor used in its operation. When originally constructed a two-phase motor was installed. The company supplying the electricity, according to a letter shown me by Dr. Lawrence, under date of May 27, 1923, refused to further supply electricity for the operation of the elevator and insisted upon the installation of a three-phase motor. The cost of a new motor 30 40

*Master's Report.*

would be approximately \$1,200.00. To repair the elevator itself, including shaft, etc., in my judgment, will cost \$500.00 more, making a total of approximately \$2,000.00.

Putty is out of many windows, and by many I mean over 100. Some have been repaired and  
 10 others need it. This will cost probably \$150.

In the engine room the low-pressure boiler has twelve cracked sections. It will cost \$1,400.00 to \$1,800.00 to replace same. There is another boiler which will do the work of two, but is not entirely satisfactory, and if that should break down the hotel would be without any.

The exterior of the hotel needs attention. The hotel is a stucco building with red tile roof in part where sloping, otherwise flat roofs. The  
 20 stucco is cracked badly and needs pointing, otherwise conditions will get worse. There is some exterior painting which should be done, window frames and iron work, although this latter is not absolutely necessary. The entire hotel needs renovating inside to place it in first-class condition.

In my judgment, to place the hotel in first-class condition, including all repairs heretofore indicated as necessary, would cost \$10,000.00.  
 30 This estimate is conservative.

October 30, 1923.

JOHN S. APPLGATE, JR.,  
 Special Master.

*Petition for Rule to Show Cause.*

**PETITION FOR RULE TO SHOW CAUSE.**

(Filed November 9, 1923.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>LAKWOOD TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p> <hr style="width: 20%; margin: 10px auto;"/> <p>WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHONE COMPANY, INC., <i>Defendant.</i></p>	<p style="font-size: 4em;">}</p>	<p>10</p> <p><i>Petition for Rule to Show Cause.</i></p> <p>20</p>
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The petition of John S. Applegate, Receiver of Lawshane Company, Inc., respectfully shows: 30

1. That he was appointed Receiver of said Lawshane Company, Inc., by this Court on the 1st day of November, 1923, and has duly qualified as such.

2. The defendant company is the owner of a hotel known as Elisberg Hotel located at Lakewood, New Jersey, and which is the principal and practically the only asset of the defendant insolvent company. 40

*Petition for Rule to Show Cause.*

3. Under an order of this Court dated the 26th day of October, 1923, this petitioner personally inspected said premises in order to ascertain its condition. The same is badly in need of repair. East, west and main roofs leak badly. The present covering is tar paper. The foundations of the hotel have settled considerably so that the roofs which formerly had sufficient grade to throw off the water are now flat and the water remains in puddles, leaking down and through the hollow tile partitions, and the flashings of the skylights of which there are several, and thereby reaching many parts and sections of the hotel from the top floor to the cellar. The leaks on main roof also in part are due to cracked coping, the water seeping through and on down into the building.

In many instances the partition lathes have rotted from the leaks. This was true in many rooms and halls. Leaks were found in ball room and in spots the plaster had fallen. It was partly in course of repair. Bar room, so-called, off ball room showed result of leaks; was partly replastered. Ceiling mostly down. Some repairs had been made. Housekeeper's room, fourth sleeping floor, part of ceiling had fallen and had been repaired recently. On the third sleeping floor there were leaks, and ceiling in places was down. Had been partly replastered. Many rooms were visited on all the floors and in many instances evidences of bad leaks were found. Same is true of walls on main stair platforms.

The roof over kitchen and pantry in practically the same condition as upper roofs. Roof covering insufficient. Skylights leak.

*Petition for Rule to Show Cause.*

The band stand ceiling had fallen due to leaks. Main dining-room ceiling showed effect of leaks from roof, and was patched. A space of some five feet long and three feet wide had fallen. Other spots loose, ready to fall. The ceiling of this room is more or less elaborate and after being replastered will require repainting and re-decorating. 10  
 Pantry ceiling in bad condition, result of leaks. Kitchen ceiling showed leaks. Airshaft roof over laundry same. Bakeshop ceiling requires new plaster and painting. Same is true as to the servants' dining-room.

Petitioner has no doubt but that a more minute examination will disclose many further defects.

4. The interest of the creditors and stockholders as well as the defendant company, and the conservation of said premises, require that 20  
 the same should be operated and conducted during the coming season, and this petitioner believes that the interest of all will be best conserved by leasing said premises to some satisfactory person and upon proper terms, but that in order said premises may be operated and may be leased at the best terms obtainable it is necessary that it be put in proper condition, and to do so the repairs above indicated are 30  
 absolutely necessary, and this petitioner believes that the approximate cost thereof will be between ten and fifteen thousand dollars.

5. That petitioner as said Receiver has no funds with which to make the repairs and improvements indicated as necessary even if authorized so to do, and it will be necessary if so authorized, in order to meet the expense of such improvements, to issue Receiver's certificates in a sum not in excess of \$15,000.00, or such other 40

*Petition for Rule to Show Cause.*

sum as the Court may approve, said certificates to be a lien upon the hotel and property of said defendant and prior to any and all other encumbrances.

6. That said premises are now subject to four mortgages, one held by New Jersey Title  
10 Guaranty and Trust Company, Jersey City; another by L. Barth & Son, Inc., of New York City; another by Lakewood Trust Company, of Lakewood, N. J., and the other by Gimbel Brothers, of New York City, and in addition thereto there are other encumbrances and liens. That said Receiver's certificates, if issued, should be made a prior lien on said premises for the reason that in view of the already exist-  
20 ing encumbrances it would be practically impossible to dispose of said Receiver's certificates unless they were so declared to be.

7. In consideration of the premises petitioner in the interest of creditors, stockholders and all the parties in interest prays:

1. That this Receiver be permitted and authorized to make such repairs as may be necessary to put the premises in question in a reasonable and proper condition of repair, so that  
30 the same may be operated during the season of 1923 and 24, to the best advantage of all concerned.

2. That this Receiver, in order to make such necessary improvements, be authorized to issue Receiver's certificates upon such terms as this Court shall deem adequate and just, but that the same shall have priority over and above all other encumbrances now affecting said premises, using the proceeds thereof for the purposes aforesaid.  
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*Petition for Rule to Show Cause.*

3. That this Receiver be authorized to operate and conduct said defendant's business during the season of 1923 and 24 or that if in said Receiver's judgment he shall deem it wise and in the best interests of all concerned to lease said hotel, that said Receiver be authorized to negotiate and enter into a proper and adequate agreement of lease on such terms as this Court may approve. 10

4. And this petitioner further prays that a rule to show cause issue directed to creditors, stockholders and defendant corporation requiring said parties to show cause before this Court at such time and place as this Court may designate why this petitioner should not be permitted to make the repairs heretofore indicated as necessary in relation to said premises; issue Receiver's certificates, which shall be a prior lien over and above all other encumbrances affecting said premises, the proceeds of which to be used in meeting the expense of making such repairs; operating and conducting the defendant's business during the season of 1923 and 24, and if necessary negotiating an agreement of lease for that purpose. 20

And this petitioner will ever pray, &c. 30

JOHN S. APPLGATE,  
Receiver.

*Petition for Rule to Show Cause.*

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

10 JOHN S. APPLGATE, being duly sworn accord-  
 to law, on his oath says that he is the petitioner  
 in the above-entitled cause; that he is familiar  
 with the matters and facts set forth in said  
 petition, and that the same are true to the best  
 of his knowledge and belief.

JOHN S. APPLGATE.

Sworn and subscribed to before me  
 this 2nd day of November, 1923.

VIOLA E. PATTERSON,  
 (SEAL) Notary Public of N. J.

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*Order Continuing Receiver.*

**ORDER CONTINUING RECEIVER.**

(Filed November 19, 1923.)

IN CHANCERY OF NEW JERSEY.

*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

*On Bill, &c.  
Order.*

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WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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This matter being opened to the Court by Furst & Furst, solicitors for and of counsel, Robert H. McCarter and Halsted H. Wainwright, solicitors for the respective complainants above named, and an order having been made on the 1st day of November, 1923, appointing John S. Applegate, Jr., temporary receiver of the above-named defendant company, and an order to show cause having been made at the same time why the appointment of said receiver should not be made permanent or other person or persons be appointed receiver or receivers; said order being made returnable before this

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*Order Continuing Receiver.*

10 Court on November 7, 1923, and proof of service of a copy of said order having been made in accordance with the Court's direction, and it appearing that said order to show cause of November 7, 1923, was continued until November 13, 1923, and after hearing George Furst of Furst & Furst, solicitors for Wallach & Behrend Co., Halsted H. Wainright and Robert H. McCarter, solicitors for the Lakewood Trust Company, James T. Carpenter, Jr., solicitor for Sima Elisberg, David L. Weil, solicitor for L. Barth & Sons, Inc., no one appearing for the Lawshane Company, Inc., and the summary inquiry prescribed by the statute having been duly held in the presence of said respective solicitors and it appearing to the Court that upon said summary  
20 inquiry the said defendant corporation has become insolvent in that it is unable to pay its debts as they fall due in the usual course of business, and has suspended its ordinary business of paying its debts as they come due, and is not about to resume its business in a short time with safety to the public and advantage to the stockholders, it is thereupon, on motion of solicitors for the respective complainants, on this 13th day of November, 1923,

30 ORDERED, ADJUDGED and DECREED, as follows:

1. That the said defendant company has become insolvent in that it is unable to pay its debts as they fall due in the usual course of business and has suspended its ordinary business of paying its debts as they come due, and is not about to resume its business in a short time with safety to the public and advantage to the stockholders.

*Order Continuing Receiver.*

2. That John S. Applegate, Jr., be and he is hereby continued as receiver of the above-named defendant company with all the powers and authorities incident thereto, and conferred upon him by the order heretofore made appointing him receiver, and especially by the act entitled "An Act concerning corporations (Revision of 1906)" and the supplements thereto and amendatory thereof. 10

3. That the said John S. Applegate, Jr., before entering upon his duties as receiver, take the oath prescribed by law and give a bond to the Chancellor of the State of New Jersey in the sum of five thousand (\$5,000) dollars conditioned for the faithful performance of his duties as receiver, which bond shall be approved as to form and the sufficiency of the surety or sureties by one of the Special Masters of this Court, and shall be filed in the office of the Clerk in Chancery as required by law. 20

E. R. WALKER,  
C.

Respectfully advised,

JOHN E. FOSTER,  
V.-C. 30

*Petition for Rule to Show Cause.*

**PETITION FOR RULE TO SHOW CAUSE.**

(Filed November 23, 1923.)

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

*On Bill, &c.*

*Petition for  
Rule to  
Show Cause.*

20

WALLACH & BEHREND Co.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

30 The petition of John S. Applegate, Receiver  
of the Lawshane Company, Inc., defendant, re-  
spectfully shows:

1. That he was appointed Receiver of said  
Lawshane Company, Inc., by this Court Novem-  
ber 1, 1923, and has duly qualified as such.

2. That on the 2nd day of November, 1923,  
upon petition of said Receiver, rule to show  
cause was granted why said Receiver should not  
make certain repairs upon defendant's premises  
so that the same could be leased for the current  
season, and to lease the same, and issue Re-

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*Petition for Rule to Show Cause.*

ceiver's certificates to meet the expenses of said repairs, a copy of which rule was served upon all creditors and stockholders of defendant corporation, and that upon the return of said rule the Receiver was directed by the Court to advertise in certain newspapers for offers to lease said premises for the current season, and that on the 20th day of November, 1923, the time directed for the return of said bids, but one bid was received, and that of E. Burack in the sum of \$12,000.00, and that as to said bid the Receiver did report to the Court that the same was inadequate and should be rejected, and that in the opinion of the Receiver, in view of the inadequacy of the bid and the failure to receive other bids, thereby showing the impossibility of renting said premises for the current season, that the interest of all concerned would be best conserved by a sale of the premises. The Court after considering the facts as hereinbefore recited did by its order direct the said Receiver to reject said bid and to make no repairs upon said premises at this time, all of which more fully appears in the second report of said Receiver filed in this Court and dated the 20th day of November, 1923.

3. Your petitioner further shows that it is advisable in the interest of the creditors and stockholders of said defendant corporation that the defendant's property, real and personal, be sold at this time, unless prior to the date of sale an advantageous and bona fide offer for the rental of said premises be made to said Receiver of not less than \$25,000.00, necessary repairs to be made by the lessee, or \$35,000.00 and said Receiver to make the necessary repairs as out-

*Petition for Rule to Show Cause.*

lined in his report of November 20, 1923, at a cost of not more than \$13,000.00.

4. Your petitioner further shows that if prior to the date of said sale the Receiver shall receive an offer of not less than \$25,000.00 for the rental of said premises, necessary repairs to be  
10 made by the lessee as aforesaid, or that an offer of not less than \$35,000.00 and the necessary repairs to be made by the Receiver, to meet the cost of said repairs it will be necessary to issue Receiver's certificates in an amount not exceeding \$13,000.00.

5. This petitioner further shows that it is necessary that Receiver's certificates be issued to pay the salary of the caretaker in charge of said defendant's premises since November 1,  
20 1923, at the rate of \$125.00 a month, to meet the cost of insurance premiums incurred since said Receiver was appointed until the sale of said premises, also cost of advertising for bids for rental of said premises already incurred, and the cost of advertising the sale of said premises hereafter to be incurred, as well as all other expenses and disbursements in relation to the said sale, aggregating in amount not more than  
30 \$2,000.00, not including the amount of insurance premiums above mentioned, and that in order that said certificates may be readily disposed of they should be declared a lien upon defendant's premises prior to any and all other liens affecting the same.

6. And in addition thereto to issue such further certificates as may be required and necessary to pay the Receiver for any and all allowances that may be made to him by the Court for  
40 his services, expenses and disbursements in the

*Petition for Rule to Show Cause.*

administration of the insolvent corporation's estate, and also for the payment of any and all expenses, services and disbursements of counsel for the Receiver should the Receiver in the course of the administration of such estate find it necessary to employ or retain counsel, said certificates if issued to be a like prior and paramount lien upon the defendant's estate as the other certificates hereinbefore mentioned. 10

7. In consideration of the premises petitioner in the interest of all creditors and stockholders, as well as other parties in interest, prays:

That a rule to show cause issue directed to all the creditors and stockholders of defendant corporation as well as all other parties in interest why:

1. This Receiver should not be authorized and directed to sell defendant's hotel premises known as Elisberg Hotel, at Lakewood, New Jersey, together with its personal property, to the highest bidder, at public or private sale, subject to all existing encumbrances now a lien of record upon said premises, under the directions of this Court and subject to its approval. 20

2. If prior to the date of the sale of said premises, if ordered, the said Receiver should receive a bona fide offer of rental of said premises of not less than \$25,000, and all necessary repairs to be made by said lessee, or an offer of \$35,000.00 for the rental of said premises and said Receiver to make all necessary repairs, so that the said premises may be operated to advantage, the said Receiver to discontinue all advertisements of the sale of said premises which may have been published, as well as all efforts to sell said property, and to negotiate a lease 30  
40

*Petition for Rule to Show Cause.*

according to the offer made as aforesaid under the direction and authority of this Court.

10 3. The Receiver should not be authorized pending a sale of defendant's premises and property, real and personal, to issue Receiver's certificates to pay the cost of making necessary  
20 repairs upon said premises if required to be made in case said premises are leased with the condition that repairs be made by said Receiver as aforesaid, to pay the salary of one Morris Weinberg, caretaker of defendant's premises since November 1, 1923, at the rate of \$125.00 a month, to meet the cost of insurance premiums incurred since said Receiver was appointed until the sale of said premises, as well as of advertising for bids for rental of said premises and  
30 the cost of advertising the sale of said premises as may be hereafter necessary, and all other expenses and disbursements in relation to the said sale, said certificates not to exceed in the aggregate as to repairs, if necessary, the sum of \$13,000.00, and as to all other expenses hereinbefore recited, not to exceed the sum of \$2,000.00, not including the amount of insurance premiums above mentioned, and that in order that said certificates may be readily disposed of  
they shall be declared a lien upon defendant's  
premises prior to any and all liens affecting the same.

4. In addition thereto there should not be issued such further certificates as may be required and necessary to pay the Receiver for any and all allowances that may be made to him by the Court for his services, expenses and disbursements in the administration of the insolvent corporation's estate, and also for the  
40 payment of any and all expenses, services and

*Petition for Rule to Show Cause.*

disbursements of counsel for the Receiver should the Receiver in the course of the administration of such estate find it necessary to employ or retain counsel, said certificates if issued to be a like prior and paramount lien upon the defendant's estate as the other certificates hereinbefore mentioned.

10

And this petitioner will ever pray, &c.

JOHN S. APPLGATE,  
Receiver.

JOHN S. APPLGATE & SON,  
Solicitors and of Counsel with Petitioner.

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

20

JOHN S. APPLGATE, being duly sworn according to law, on his oath says that he is the petitioner in the above-entitled cause; that he is familiar with the matters and facts set forth in said petition, and that the same are true to the best of his knowledge and belief.

JOHN S. APPLGATE.

Sworn and subscribed to before me  
this 23rd day of November, 1923.

30

VIOLA E. PATTERSON,  
(SEAL) Notary Public of N. J.

40

*Notice Issued by Receiver.***NOTICE ISSUED BY RECEIVER.**

Re Lawshane Co., Inc., insolvent corporation.

10 The Court today made an order to show cause why the premises should not be sold unless prior to sale an advantageous offer of rental is received of not less than \$25,000, lessee making all repairs, or \$35,000, Receiver making repairs, as outlined in report of November 20th. Also why Receiver's certificates should not issue to pay cost of repairs, if necessary, not exceeding \$13,000, and to pay caretaker's salary, insurance premiums, advertising rental and sale, not in excess of \$2,000, and such further certificates as may be necessary to pay Receiver's allowances and counsel fees, if any, the lien of said certificates to be prior to all encumbrances.

20

Subsequently to making above order I reported orally to the Court two offers of lease, namely, one \$25,000, tenant making repairs, the other \$35,000, Receiver making repairs, and the Court orally directed me to send notice to all persons interested to the following effect, namely:

30 That Court would be inclined to favorably entertain on Monday, November 26, 1923, at Chancery Chambers, Newark, New Jersey, any proposition for rental of hotel for current season that would produce rental not less than \$35,000, if Receiver were under such offer required to make repairs outlined in Receiver's report of November 20th, or net rental of \$25,000 if tenant agree to make such repairs at his own expense under supervision of Receiver.

40 In furtherance of Court direction Receiver will receive bids on terms above indicated on or

*Notice Issued by Receiver.*

before 10:00 o'clock A. M. Monday, November 26th, either personally or written, addressed to the Receiver, care of Furst & Furst, 164 Market street, Newark, N. J., and upon receipt of same Receiver will present same to the Court for approval and direction. The rental offer, if accepted, to be paid in installments as will be satisfactory to Receiver, and payment thereof to be secured by a bond of surety company with terms and conditions satisfactory to the Receiver.

Dated, November 23, 1923.

JOHN S. APPLGATE,  
Receiver.

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*Petition for Rule to Show Cause.*

**PETITION FOR RULE TO SHOW CAUSE.**

(Filed December 3, 1923.)

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

20

WALLACH & BEHREND Co.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

*On Bill, &c.*

*Petition for  
Rule to  
Show Cause.*

30

The petition of John S. Applegate, Receiver of the Lawshane Company, Inc., defendant, respectfully shows:

1. That he was appointed Receiver of said Lawshane Company, Inc., by this Court November 1, 1923, and has duly qualified as such.

2. That on the 2nd day of November, 1923, upon petition of said Receiver rule to show cause was granted why said Receiver should not make certain repairs upon defendant's premises so that the same could be leased for the current season, and to lease the same, and issue

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*Petition for Rule to Show Cause.*

Receiver's certificates to meet the expenses of said repairs, a copy of which rule was served upon all creditors and stockholders of defendant corporation, and that upon the return of said rule the Receiver was directed by the Court to advertise in certain newspapers for offers to lease said premises for the current season, and that on the 20th day of November, 1923, the time directed for the return of said bids but one bid was received, and that of E. Burack in the sum of \$12,000.00, and that as to said bid the Receiver did report to the Court that the same was inadequate and should be rejected, and that in the opinion of the Receiver in view of the inadequacy of the bid and the failure to receive other bids, thereby showing the impossibility of renting said premises for the current season, that the interest of all concerned would be best conserved by a sale of the premises. The Court after considering the facts as hereinbefore recited did by its order direct the said Receiver to reject said bid, and to make no repairs upon said premises at this time, all of which more fully appears in the second report of said Receiver filed in this Court and dated the 20th day of November, 1923.

3. Your petitioner further shows that it is advisable in the interest of the creditors and stockholders of said defendant corporation that the defendant's property, real and personal, be sold at this time, unless prior to the date of sale an advantageous and bona fide offer for the rental of said premises be made to said Receiver of not less than \$25,000, necessary repairs to be made by the lessee, or \$35,000 and said Receiver to make the necessary repairs as out-

*Petition for Rule to Show Cause.*

lined in his report of November 20, 1923, at a cost of not more than \$13,000.00.

10 4. Your petitioner further shows that if prior to the date of said sale the Receiver shall receive an offer of not less than \$25,000.00 for the rental of said premises, necessary repairs to be made by the lessee as aforesaid, on that an offer of not less than \$35,000.00 and the necessary repairs to be made by the Receiver, to meet the cost of said repairs it will be necessary to issue Receiver's certificates in an amount not exceeding \$13,000.00.

20 5. This petitioner further shows that it is necessary that Receiver's certificates be issued to pay the salary of the caretaker in charge of said defendant's premises since November 1, 1923, at the rate of \$125.00 a month, to meet the cost of insurance premiums incurred since said Receiver was appointed until the sale of said premises, also cost of advertising for bids for rental of said premises already incurred, and the cost of advertising the sale of said premises hereafter to be incurred, as well as all other expenses and disbursements in relation to the said sale aggregating in amount not more than 30 \$2,000, not including the amount of insurance premiums above mentioned, and that in order that said certificates may be readily disposed of they should be declared a lien upon defendant's premises prior to any and all other liens affecting the same.

40 6. And in addition thereto to issue such further certificates as may be required and necessary to pay the Receiver for any and all allowances that may be made to him by the Court for his services, expenses and disbursements in

*Petition for Rule to Show Cause.*

the administration of the insolvent corporation's estate, and also for the payment of any and all expenses, services and disbursements of counsel for the Receiver should the Receiver in the course of the administration of such estate find it necessary to employ or retain counsel, said certificates if issued to be a like prior and paramount lien upon the defendant's estate as the other certificates hereinbefore mentioned. 10

7. In consideration of the premises petitioner in the interest of all creditors and stockholders as well as other parties in interest prays:

That a rule to show cause issue directed to all the creditors and stockholders of defendant corporation as well as all other parties in interest why: 20

1. This Receiver should not be authorized and directed to sell defendant's hotel premises known as Elisberg Hotel at Lakewood, New Jersey, together with its personal property, to the highest bidder, at public or private sale, subject to all existing encumbrances now a lien of record upon said premises, under the directions of this Court and subject to its approval. 20

2. If prior to the date of the sale of said premises, if ordered, the said Receiver should receive a bona fide offer of rental of said premises of not less than \$25,000, and all necessary repairs to be made by said lessee, or an offer of \$35,000 for the rental of said premises and said Receiver to make all necessary repairs, so that the said premises may be operated to advantage, the said Receiver to discontinue all advertisements of the sale of said premises which may have been published, as well as all efforts to sell said property, and to negotiate a lease 40

*Petition for Rule to Show Cause.*

according to the offer made as aforesaid under the direction and authority of this Court.

10 3. The Receiver should not be authorized pending a sale of defendant's premises and property, real and personal, to issue Receiver's certificates to pay the cost of making necessary repairs upon said premises if required to be made  
20 in case said premises are leased with the condition that repairs be made by said Receiver as aforesaid, to pay the salary of one Morris Weinberg, caretaker of defendant's premises since November 1, 1923, at the rate of \$125 a month, to meet the cost of insurance premiums incurred since said Receiver was appointed until the sale of said premises, as well as of advertising for bids for rental of said premises and  
30 the cost of advertising the sale of said premises as may be hereafter necessary, and all other expenses and disbursements in relation to the said sale, said certificates not to exceed in the aggregate as to repairs, if necessary, the sum of \$13,000, and as to all other expenses hereinbefore recited, not to exceed the sum of \$2,000, not including the amount of insurance premiums above mentioned, and that in order that said certificates may be readily disposed of they shall be  
30 declared a lien upon defendant's premises prior to any and all liens affecting the same.

4. In addition thereto there should not be issued such further certificates as may be required and necessary to pay the Receiver for any and all allowances that may be made to him by the Court for his services, expenses and disbursements in the administration of the insolvent corporation's estate, and also for the payment of any and all expenses, services and  
40 disbursements of counsel for the Receiver should

*Petition for Rule to Show Cause.*

the Receiver in the course of the administration of such estate find it necessary to employ or retain counsel, said certificates if issued to be a like prior and paramount lien upon the defendant's estate as the other certificates hereinbefore mentioned.

And this petitioner will ever pray, &c. 10

JOHN S. APPLGATE,  
Receiver.

JOHN S. APPLGATE & SON,  
Solicitors and of Counsel with Petitioner.

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

JOHN S. APPLGATE, being duly sworn according to law, on his oath says that he is the petitioner in the above-entitled cause; that he is familiar with the matters and facts set forth in said petition, and that the same are true to the best of his knowledge and belief. 20

JOHN S. APPLGATE.

Sworn and subscribed to before me  
this 23rd day of November, 1923. 30

VIOLA E. PATTERSON,  
(SEAL) Notary Public of N. J.

*Agreement.*

**AGREEMENT.**

(Filed December 12, 1923.)

WHEREAS the Lakewood Trust Company is the holder of a mortgage upon the Elisberg Hotel at Lakewood, New Jersey, and has brought proceedings to foreclose said mortgage, and

10 WHEREAS an action was brought wherein Wallace & Behrend Co., Inc., was complainant and The Lawshane Company, Inc., was defendant, in the Chancery Court of New Jersey, and

WHEREAS a receiver was appointed in the aforesaid actions, and

20 WHEREAS it is to the interest of The Lawshane Company, Inc., the owner of the equity in the aforesaid hotel, George W. Lawrence, who has or claims to have an interest therein as trustee, and the Lakewood Trust Company, the holder of the said mortgage, to bring about a sale of the aforesaid premises and to pay the creditors who have filed claims against The Lawshane Company, Inc., in the aforesaid actions, and

WHEREAS Louis S. Shane of New York is desirous of purchasing the aforesaid property,

30 NOW, THEREFORE, this agreement, made and entered into this 12th day of December, 1923, by and between The Lakewood Trust Company of New Jersey, George W. Lawrence, of Lakewood, New Jersey; The Lawshane Company, Inc., a corporation organized under the laws of the State of New York, and Louis S. Shane, of New York, WITNESSETH:

40 That the said Louis S. Shane agrees to purchase the aforesaid property for the sum of three hundred and seventy-five thousand dollars (\$375,000); ten thousand dollars (\$10,000) to be paid upon the execution of this agreement,

*Agreement.*

the receipt whereof is hereby acknowledged, and forty thousand dollars (\$40,000) on May 1st, 1924, and the balance subject to two mortgages in sums aggregating not exceeding three hundred and twenty-five thousand dollars (\$325,000), now a lien against the said premises.

That Louis S. Shane is to take immediate possession of the aforesaid hotel and to operate the same and is to pay interest on the first and second mortgages from the date hereof until May 1st, 1924; taxes to be apportioned from this date to May 1st, 1924; and an apportionment of the insurance premium from this date to May 1st, 1924, which insurance shall not exceed the sum of three hundred and twenty-five thousand dollars (\$325,000). 10

That in addition thereto the said Louis S. Shane shall pay the sum of ten thousand dollars (\$10,000) to the Lakewood Trust Company, which is to be used in payment of any and all indebtedness upon notes made, executed or endorsed by Mrs. Sima Elisberg, which said notes are now held by the Lakewood Trust Company and to be delivered upon payment of the aforesaid sum, payable \$5,000 on February 26, 1924, and \$5,000 on April 30, 1924. 20

That upon the payment of the balance of forty thousand dollars (\$40,000) on May 1, 1924, there shall be delivered to Louis S. Shane a bargain and sale deed of the said premises in Lakewood, New Jersey, known as the Elisberg Hotel property, the description in said deed to conform to the description of the deeds conveying said premises to George W. Lawrence as Trustee and The Lawshane Company, Inc., if there be such deed of record; said deed or deeds of conveyance to be sufficient to convey a market- 30 40

*Agreement.*

able title to said property, subject, however, to the two mortgages hereinabove mentioned and free from any and all other liens.

That there is to be executed and delivered to said Louis S. Shane a bill of sale conveying the right, title and interest of the said Lakewood Trust Company, George W. Lawrence and The Lawshane Company, Inc., in and to all the chattels now in the said hotel or elsewhere belonging to the said hotel, whether the same are held by George W. Lawrence, The Lawshane Company, Inc., or are in the possession of any other person, free and clear of any claims of the Lakewood Trust Company, George W. Lawrence, Trustee, and Gimbel Brothers, Inc., or any mortgages which may have been executed by the Lakewood Trust Company, George W. Lawrence, Trustee, or The Lawshane Company, Inc.

That upon the delivery of the said deed to the said Louis S. Shane, said Louis S. Shane agrees to deliver a quitclaim deed to be delivered by Sima Elisberg to the Lakewood Trust Company of all right, title and interest to the Lorraine Hotel property located at Edgemere, Long Island.

It is further agreed that the Lakewood Trust Company may execute a deed of the Lorraine Hotel on or before May 1, 1924, to any purchaser it may obtain for the Lorraine Hotel and that the proceeds of any such sale shall be held in escrow by the Lakewood Trust Company until May 1, 1924, and that upon the delivery of the deed to Louis S. Shane and the payment of the said \$40,000 to the Lakewood Trust Company, the said sum realized from the sale of the Lorraine Hotel shall be the absolute property of the Lakewood Trust Company and said Sima

*Agreement.*

Elisberg shall execute a release of any and all interest to the chattels in the Lorraine Hotel, including silverware, china, linen, furniture, bedding, rugs, etc., which at the present time are located in said Lorraine Hotel or elsewhere.

That upon delivery of the aforesaid instruments and the full performance of this contract all actions brought by Sima Elisberg against Lakewood Trust Company and George W. Lawrence or Lawshane Company shall be discontinued, and all actions brought by Lakewood Trust Company shall be discontinued and that releases be exchanged between all the parties to this agreement and Sima Elisberg. 10

That Lakewood Trust Company, upon the passing of title as aforesaid, will deliver to Louis S. Shane all notes or other evidence of indebtedness held by Lakewood Trust Company or George W. Lawrence, made, executed or endorsed by Sima Elisberg, or any members of her family, and any other evidence of indebtedness by Sima Elisberg arising out of the construction or operation of said Hotel Elisberg at Lakewood, New Jersey; 20

It is further agreed that in the event that L. Barth & Son or the assignee of the mortgage executed to L. Barth & Son refuses to accept \$25,000 out of the \$50,000 purchase price herein mentioned and discontinue his foreclosure suit of his said mortgage, in part payment of the second mortgage and to issue to the Lakewood Trust Company a participating certificate to the extent of \$25,000 in said second mortgage, on or before May 1, 1924, this contract shall be at an end and the Lakewood Trust Company shall return to Louis S. Shane the said sum of \$10,000 hereinabove first mentioned, the title to all chat- 30 40

*Agreement.*

tels said Shane may bring to the hotel shall remain undetermined and unaffected by their return to the hotel.

Said Louis S. Shane further agrees to give to the Lakewood Trust Company one-half of any and all profits arising out of the operation of  
 10 said hotel from date to May 1, 1924, inclusive, provided title shall not pass as aforesaid.

Any valid unsecured indebtedness now existing against The Lawshane Co., Inc., and, if necessary, established in a legal way that shall be proven before the receiver within the time limited by law shall be paid by the Lakewood Trust Company.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and  
 20 year first above written.

LOUIS S. SHANE. (L. S.)

GEO. W. LAWRENCE. (L. S.)

LAWSHANE CO., INC.,

GEO. W. LAWRENCE, Pres. (L. S.)

LAKWOOD TRUST CO.,

G. G. SMITH, Pres. (L. S.)

30 A. Parmmitris,  
 Asst. Secretary.

*Order for Possession.*

**ORDER.**

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*  
*Defendants.*

WALLACE & BEHREND Co.,  
INC.,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

10

*On Bill, etc.*

*Order  
Delivering  
Possession  
to Shane.*

20

It being represented to the Court by agreement signed by the Lakewood Trust Company, Lawshane Company, Inc.; George W. Lawrence and Louis Shane, and shown to the Court that there is no longer any reason for the continuance of the active performance by John S. Applegate, Jr., receiver of the Lawshane Company, Inc., of his duties as such receiver, and that he should be discharged from the further possession of the Elisberg Hotel at Lakewood, and that surrender thereof should be made in accordance with the terms of said agreement, to Louis Shane, and it appearing that satisfactory arrangement has been made by which the valid claims of all unsecured creditors of the Law-

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*Order for Possession.*

shane Company, Inc., will be paid, together with the fees of the said receiver and the costs of Wallace & Behrend Co., Inc., together with a counsel fee of \$500.00, and no reason appearing to the contrary,

10 It is thereupon, on this 12th day of December, 1923, on motion of Robert H. McCarter, of counsel with the Lakewood Trust Company, one of the above-named complainants, ORDERED that possession of the Elisberg Hotel be forthwith, by said receiver, surrendered to Louis Shane, and that thereafter the said receiver be and he is hereby relieved from all further duties or responsibilities in connection with the said hotel and its contents, and that such possession is so to be transferred to said Louis Shane with the understanding that the said agreement herein-  
20 above referred to will in all respects be carried out and performed;

AND IT IS FURTHER ORDERED that the said receiver be paid the sum of \$3,500.00, together with his disbursements and obligations, not to exceed the sum of \$900.00, and that the said Wallace & Behrend Co., Inc., be paid their costs to be taxed, and a counsel fee to their counsel, Messrs. Furst & Furst, of \$500.00,

30 AND IT IS FURTHER ORDERED that in the event of the performance by all the parties of the said agreement (a copy whereof is hereto annexed), the said John S. Applegate, receiver as aforesaid, shall execute and deliver to the said Louis Shane a deed conveying all his right, title and interest in and to the said Elisberg Hotel, and the chattels in connection therewith.

E. R. WALKER,  
C.

40 Respectfully advised,  
JOHN E. FOSTER,  
V.-C.

*Order for Possession.*

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC. *et al.*,  
*Defendants.*

10

WALLACE & BEHREND Co. INC.  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

ON BILL, &c.

ORDER FOR POSSESSION.

20

Robert H. McCarter, Esquire, of  
Counsel with Lakewood Trust Company,  
765 Broad street, Newark, N. J.

Filed December 12, 1923.

Received in office January 2, 1924.

JESSE R. SALMON,  
Clerk.

We hereby consent to the within order, Dec. 30  
12, 1923.

FURST & FURST,  
Solicitors for Complainant  
for Wallach & Behrend Co.

40

*Notice.*

**NOTICE.**

Filed July 3, 1924.

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

*On Bill, etc.  
Notice.*

20

WALLACH & BEHREND Co.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

30 To Halsted H. Wainright, Esq., attorney for  
Lakewood Trust Co.; James D. Carpenter,  
Esq., attorney for Louis Shane and Sima Elis-  
berg; Benjamin Frindel, Esq., and John S.  
Applegate, Esq., Receiver of Lawshane Com-  
pany, Inc.

Gentlemen:

PLEASE TAKE NOTICE, that we will apply to the  
Chancellor, at the Chancery Chambers, Pruden-  
tial Building, Newark, N. J., on the 1st day of  
July, 1924, at 10:00 o'clock (daylight saving  
time) in the forenoon, or as soon thereafter as  
counsel can be heard:

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Notice.

1. For an order directing the Lakewood Trust Company to pay the following unsecured creditors, whose claims have been filed with John S. Applegate, Receiver of the above-named defendant company:

O. J. Gude Co. ....	\$1,984.00	
Ocean County Motor Trucking Co..	100.00	10
Wilson & Co.....	235.25	
E. Douglas Applegate .....	116.95	
Wallach & Behrend Co.....	643.33	
Eugene R. Trott Co.....	114.31	
R. C. Williams & Co., Inc.....	172.46	
Knickerbocker Leather Co. ....	900.00	
Belmar Laundry Co., Inc. ....	584.99	
Gregory Canales .....	327.55	

2. For an order directing John S. Applegate, the Receiver herein, to take possession of all of the assets of the defendant company. 20

3. For an order directing the Lakewood Trust Company and Louis S. Shane to account for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date that the said Louis S. Shane took possession of the said hotel pursuant to an agreement hereinafter referred to.

4. For such further order and relief that may be just and proper in the premises. 30

This notice is given pursuant to an agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane, wherein and whereby it provided (1) that any valid unsecured indebtedness now existing against the Lawshane Co., Inc., and if necessary established in a legal way that shall be proven before the 40

*Notice.*

Receiver within the time limited by law, shall be paid by the Lakewood Trust Company, and (2) that Louis S. Shane agrees to give to the Lakewood Trust Company one-half of any and all profits arising out of the operation of said hotel from date to May 1, 1924, inclusive, provided title shall not pass as aforesaid.

10

Yours truly,

FURST & FURST,  
Attorneys for Creditors.

Service of a copy of notice returnable July 1, 1924, is hereby acknowledged this 19th day of June, 1924.

20

JAMES D. CARPENTER, JR.,  
JOHN S. APPLGATE,

Receiver.

HALSTED H. WAINRIGHT,  
Solicitor of Lakewood Trust Company.

30

40

Order.

**ORDER.**

Filed July 8, 1924.

## IN CHANCERY OF NEW JERSEY.

*Between*LAKEWOOD TRUST COMPANY,  
*Complainant,**and*LAWSHANE COMPANY, INC.,  
*et al.,**Defendants.*WALLACH & BEHREND Co.,  
INC.,*Complainant,**and*LAWSHANE COMPANY, INC.,  
*Defendant.*

10

*On Bill, etc.*  
*Order.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend and other creditors, upon the return of a notice directed to the Lakewood Trust Company, one of the complainants herein; John S. Applegate, the Receiver appointed herein; Louis S. Shane, Benjamin Frindel and Sima Elisberg, for an order directing the Lakewood Trust Company to pay certain unsecured creditors whose claims were filed with and allowed by the Receiver, John S. Applegate; for an order directing John S. Applegate, the Receiver, to take possession of the assets of the defendant company, and for an order directing the Lakewood Trust Company and Louis S. Shane to account for the

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*Order.*

10 operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date that the said Louis S. Shane took possession of the said hotel pursuant to a certain agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane; and it appearing that all of the said parties were duly served with the said notice and that a proof of service has been filed with this Court, and after hearing George Furst, of Furst & Furst, in support of said motion, and Halsted H. Wainright in opposition thereto, it is on this 8th day of July, 1924, on motion of Furst & Furst, solicitors as aforesaid,

20 ORDERED, That John S. Applegate, the Receiver, be and he is hereby authorized and directed to take possession of all the assets of the Lawshane Company, Inc.; and it is further

30 ORDERED, That the Lakewood Trust Company and Louis S. Shane account to the said Receiver, John S. Applegate, for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date the said Louis S. Shane took possession pursuant to agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane.

E. R. WALKER,  
C.

Respectfully advised,

JOHN E. FOSTER,  
V.-C.

*Notice.*

**NOTICE.**

(Filed July 30, 1924.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>LAKWOOD TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>et</i> <i>al.,</i></p> <p style="text-align: center;"><i>Defendants.</i></p> <hr style="width: 20%; margin: 5px auto;"/> <p>WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>Defendant.</i></p>	}	<p>10</p> <p><i>On Bill, etc.</i></p> <p><i>Notice.</i></p> <p>20</p>
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To Halsted H. Wainright, Esq., attorney for  
Lakewood Trust Co.

DEAR SIR:

PLEASE TAKE NOTICE, that we will apply to the  
Chancellor at the Chancery Chambers, Pruden- 30  
tial Building, Newark, New Jersey, on Thurs-  
day, July 31, 1924, at 10:00 o'clock (daylight  
saving time), for an order directing the Lake-  
wood Trust Company and Louis S. Shane to  
pay to John S. Applegate, the Receiver herein,  
the profits as set up in an accounting presented  
to the Receiver herein by Louis S. Shane.

Yours truly,

FURST & FURST, 40  
Attorneys for Creditors.

*Order.***ORDER.**

Filed July 31, 1924.

## IN CHANCERY OF NEW JERSEY.

10 *Between*LAKEWOOD TRUST COMPANY,  
*Complainant,**and*LAWSHANE COMPANY, INC.,  
*et al.,**Defendants.**On Bill, etc.*  
*Order.*

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WALLACH & BEHREND CO.,  
INC.,*Complainant,**and*LAWSHANE COMPANY, INC.,  
*Defendant.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, and it appearing that Louis S. Shane has operated the hotel of the defendant company located at Lakewood, New Jersey, pursuant to an agreement made and entered into December 12, 1923, by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane, and it appearing that the operation of the said hotel by the said Louis S. Shane produced a profit of \$19,370.32, and it appearing that an order was made by the Court herein directing the said Lakewood Trust Com-

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*Order.*

pany and the said Louis S. Shane to account to the Receiver herein for the operation of the hotel, and after hearing George Furst, of Furst & Furst, in support of said motion, and Halsted H. Wainright, in opposition thereof, it is, on this 31st day of July, 1924, on motion of Furst & Furst, attorneys aforesaid,

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ORDERED, That Louis S. Shane and the Lake-wood Trust Company, their attorneys, agents or employees, and any and all persons who have received said sum of \$19,370.32 or any part thereof, be and they are hereby directed to pay to John S. Applegate, the Receiver herein, any and all sums of money received by them from the operation of the said hotel, during the season of 1923 and 1924 within ten days from the date of the service of a true copy of this order.

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EDWIN ROBERT WALKER,  
C.

Respectfully advised,

JOHN E. FOSTER,  
V.-C.

Affidavit of service filed August 6, 1924.

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STATE OF NEW JERSEY,  
COUNTY OF ESSEX.

TOBY FURST, being duly sworn, on his oath according to law deposes and says: That he is associated with the firm of Furst & Furst, attorneys for creditors in the above-entitled matter; that on August 1, 1924, he served Louis Shane personally with a copy of the order advised by Vice-Chancellor Foster on July 31, 1924, a true

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*Order.*

copy of which is hereto annexed and made part hereof.

TOBY FURST.

Sworn and subscribed to before me  
this 5th day of August, 1924.

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RAYMOND H. COHEN,  
An Attorney at Law of New Jersey.

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Notice.

**NOTICE AND PETITION.**

Filed Aug. 12, 1924.

IN CHANCERY OF NEW JERSEY.

*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*  
*Defendants.*

WALLACH & BEHREND CO.,  
INC.,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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*On Bill &c.*  
*On Petition*  
*&c.*

*Notice and*  
*Petition.*

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To John S. Applegate, Esq., receiver of Lawshane Company, Inc.

Furst & Furst, Esqs., solicitors for certain creditors.

Halsted H. Wainright, Esq., solicitor for Lakeswood Trust Company.

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SIRS:

TAKE NOTICE that as solicitors specially appearing for the purposes mentioned in the annexed petition and for no other purpose, we shall present a petition, of which the annexed is a true copy, to the Chancellor at the Chancery Chambers, State House, Trenton, N. J., on Tuesday, August 12, 1924, at 10:30 A. M. (Daylight

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*Notice.*

Saving Time), or as soon thereafter as the Court can attend to the same, and apply for an order setting aside, so far as it applies to the petitioner Louis S. Shane, an order of the Court made July 31, 1924, for the reasons set forth in the annexed petition.

10

Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors specially appearing  
for Louis S. Shane to set aside  
said order of the Court, and for  
no other purpose.

Dated August 6, 1924.

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*Petition of Louis S. Shane.*

**PETITION.**

Filed Aug. 12, 1924.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>LAKWOOD TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p> <hr/> <p>WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, INC., <i>Defendant.</i></p>	}	<p><i>On Bill &amp;c.</i></p> <p><i>Petition of</i></p> <p><i>Louis S.</i></p> <p><i>Shane for</i></p> <p><i>Leave to</i></p> <p><i>Appear</i></p> <p><i>Specially</i></p> <p><i>to Attack the</i></p> <p><i>Legality of</i></p> <p><i>an Order</i></p> <p><i>Made in This</i></p> <p><i>Cause July</i></p> <p><i>31, 1924, and</i></p> <p><i>to set aside</i></p> <p><i>the Same as</i></p> <p><i>Applying to</i></p> <p><i>Him, and for</i></p> <p><i>No Other</i></p> <p><i>Purpose.</i></p>	<p>10</p> <p>20</p>
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To the Honorable Edwin Robert Walker, Chan- 30  
cellor of the State of New Jersey.

The petition of Louis S. Shane of the Borough of Brooklyn, City and State of New York, appearing specially for the purposes herein mentioned and for no other purpose, respectfully shows unto your Honor as follows:

(1) That after the bills of complaint in the above-entitled causes had been filed, and after a Receiver had been appointed for Lawshane Com- 40

*Petition of Louis S. Shane.*

pany, Inc., and had taken possession of the Elisberg Hotel at Lakewood, New Jersey, and after various proceedings had been taken in said causes, one of which was to make sale or lease of the Elisberg Hotel for the season of 1923-1924, at Lakewood, New Jersey, your petitioner made  
10 and entered into an agreement, a true copy whereof is hereto annexed, marked Exhibit "A," and to which reference is hereby made for certainty. This agreement was expressly approved by the Court, on motion of counsel for the Lakewood Trust Company, one of the parties to said agreement, under an order dated December 12, 1923.

(2) Your petitioner entered into said agreement in good faith, upon the understanding that  
20 counsel for the Lakewood Trust Company, which had loaned a very large amount of money secured by mortgages on the said Elisberg Hotel, should make application to the Court to approve the said agreement. The said agreement shows that none of the profits from the operation of the said Hotel should go to the Lawshane Company, Inc., nor to the Receiver who had theretofore been appointed for the same, and on the contrary the order of the Court approving the said  
30 agreement shows that upon the making and approval of the said agreement the Receiver was discharged and his fees were fixed and ordered paid, and they were in fact paid as petitioner is informed and believes.

(3) After the making of the said agreement your petitioner immediately went into possession of the said hotel, advanced large sums of money of his own to put the hotel in condition for  
40 operation during the contemplated season, and

*Petition of Louis S. Shane.*

fully performed the said agreement in all things on his part to be performed, including the payment of \$10,000.00 to the Lakewood Trust Company under the terms of said agreement.

(4) Your petitioner operated the said hotel at a profit, one-half of which profits your petitioner paid to the Lakewood Trust Company in accordance with the terms of said agreement, and the remaining one-half of the profits your petitioner equally divided with Sima Elisberg. Your petitioner also avers that Sima Elisberg turned over to your petitioner for use at the Elisberg Hotel some personal property and silverware, which was in her possession in the City of New York, and outside the jurisdiction of this Court and said one-half of petitioner's share of the profits was by way of consideration for her taking such personal property to the Elisberg Hotel; that all of such personal property was left by your petitioner, at the end of the season, in the said hotel in charge of the Lakewood Trust Company. At the end of the season your petitioner left the said hotel and did not purchase the same under the terms of said agreement simply because of the fact that the Lakewood Trust Company did not get the consent of the second mortgagee to withdraw his foreclosure proceedings and become a participant in one of the mortgages held by the Lakewood Trust Company. I am informed that the second mortgagee would not agree to the terms of the agreement hereto annexed and marked Exhibit "A." I did not and could not be expected to buy the said hotel with a suit pending to foreclose the second mortgage, which was in the sum of approximately \$200,000. Within the last week I have received a notice that the Elisberg

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*Petition of Louis S. Shane.*

Hotel will be sold under this foreclosure proceeding by the Sheriff of Ocean County on August 19, 1924, at Toms River.

10 (5) Petitioner further shows that he is not a party to this cause, either as complainant or defendant, and that his sole interest in this proceeding is as a party to the agreement hereto attached marked Exhibit "A."

The order of the Court approving said agreement is hereto attached and marked Exhibit "B."

20 (6) On Friday, August 1, 1924, your petitioner was served at the Hathaway Inn, Deal, New Jersey, by Mr. Toby Furst, with a copy of an order purporting to be made by the Court July 31, 1924. I did not have any notice of any kind that an application was to be made for such an order, although after the order of July 31st was served on me I was informed by Mr. Sherman, my New York counsel, that Mr. Furst had mailed a copy of a notice of motion to Mr. Carpenter in Jersey City, who is attorney of record in this proceeding for Mrs. Elisberg, and upon Mr. Sherman's orders Mr. Carpenter had notified Mr. Furst that he could not acknowledge service of this notice for your petitioner because  
30 he was not authorized to appear for him and had not appeared for him in this suit. Mr. Carpenter did appear for me in a proceeding brought in this Court by Mr. Frindel claiming a share of the profits of the operation of the Elisberg Hotel for the season 1923-1924, and I retained Mr. Carpenter to contest that suit on my behalf because of his familiarity with the controversy in this proceeding. Mr. Carpenter also represented me in a slander suit brought in the Federal  
40 Court by Mr. Frindel against me personally.

*Petition of Louis S. Shane.*

He was retained specially in that suit and paid a retainer by me before the answer was filed. Mr. Carpenter has never represented me in any other suits or proceedings.

(7) Your petitioner further shows that under the terms of the agreement hereto annexed your petitioner did not operate the said hotel at any time for the Lawshane Company, Inc., or its Receiver, nor for anybody else; that your petitioner was a free agent in the operation of the said hotel and in the making of the said agreement, except as the said agreement imposed certain terms and conditions regarding the operation of the hotel pending its proposed purchase by petitioner under said agreement. 10

(8) Your petitioner further shows that a notice in writing was served by Furst & Furst upon all the solicitors of record in this case of an application to be made July 1, 1924, for an order directing the Lakewood Trust Company to pay certain unsecured creditors the amount of their claims, a copy of which notice is hereto annexed and marked Exhibit "C." I knew nothing about this matter, but am informed this day that Mr. Carpenter and Mr. Sherman appeared in Court and after waiting quite awhile and having no objection to the Lakewood Trust Company paying the claims, and having no objection to my making an accounting of the operations of the hotel so informed other counsel in the case and left. Mr. Sherman told me to get an accounting ready by the first of July and send it to Mr. Carpenter. Petitioner was unable to get this accounting ready by July 1st, but upon the accounting being completed by certified public accountants your petitioner sent one 20 30 40

*Petition of Louis S. Shane.*

copy on or about July 15th to Mr. Carpenter and one copy to the Lakewood Trust Company. Your petitioner is informed and believes that Mr. Carpenter mailed the copy of said account to Mr. Applegate under date of July 16, 1924. Your petitioner had no objection to making the  
10 said accounting upon the request of any one, particularly upon the request of the Court which had approved the terms of the agreement hereto annexed marked Exhibit "A."

Your petitioner therefore prays that he may be permitted to appear specially for the purpose of attacking the validity and legality of the order made herein July 31, 1924, (a) on the ground that this Court does not have jurisdiction over your petitioner for the purpose of making  
20 said order; (b) on the ground that under the terms of the agreement hereto annexed and marked Exhibit "A" your petitioner's share of the profits of the operation of the said Elisberg Hotel were not payable to the Receiver of Lawshane Company, Inc., or to the Lawshane Company, Inc., or to any other person or persons under the terms of Exhibit "A," (one-half of your petitioner's share of the profits of the operation of the Elisberg Hotel being paid to Sima  
30 Elisberg under a separate agreement made between your petitioner and Sima Elisberg, under the terms of which Mrs. Elisberg returned the chattels which she had in New York to the Elisberg Hotel so that petitioner could operate said hotel during the season 1923-1924. Had it not been for said agreement with Mrs. Elisberg petitioner would not have made this agreement); (c) on the ground that petitioner did not have or receive notice of the application to  
40 the Court for the order dated July 31, 1924, and

*Petition of Louis S. Shane.*

that not being a party to the said cause and not served with process herein, said order is violative of the Federal Constitution which provides that no one shall be deprived of his property without due process of law.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel                    10  
with Louis S. Shane specially  
appearing for the purposes  
herein mentioned and for no  
other purpose.

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

LOUIS S. SHANE, of full age, being duly sworn, according to law, upon his oath deposes and says: 20  
I have read the foregoing petition, know the contents thereof and the matters and things therein contained are all true.

Deponent further says that he is a resident of the Borough of Brooklyn, City and State of New York, and was served with a copy of the order made July 31, 1924, at the Hathaway Inn, Deal, New Jersey, which deponent is operating and managing this summer.

Deponent had no notice of any kind of an application to be made for said order. I did not even know that Mr. Furst had mailed a copy of said order to Mr. Carpenter, attorney of record for Sima Elisberg, until I reached his office the day of the verification of this affidavit for the purpose of attacking the validity of the order of July 31st. It is true that Mr. Carpenter did not have any authority to represent me as he stated in his letter to Mr. Furst, a copy of which Mr. Carpenter has shown me. I did not 40

*Petition of Louis S. Shane.*

10 wish Mr. Carpenter to appear for me in this matter because I have been harrassed to death with law suits ever since making the agreement annexed to my petition marked Exhibit "A." Several suits were brought against me by Mr. Frindel, all of which were unfounded, and they caused me not only a large amount of trouble, but a great deal of expense, and I did not want to have any more trouble or expense in connection with the Elisberg Hotel.

20 I did not make any objection to accounting for the operation of the Elisberg Hotel for last season because the bank was entitled to an accounting under the terms of the agreement, and I had absolutely no objection to making and delivering a copy of the account to Mr. Applegate as the Court requested. I would have given Mr. Furst or Mr. McCarter, who at one time appeared in this case, a copy of said account if request had been made upon me for a copy.

LOUIS S. SHANE.

Subscribed and sworn to before me  
this sixth day of August, 1924.

30 CARL S. KUEBLER,  
Attorney-at-Law of New Jersey.

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

40 JAMES D. CARPENTER, JR., of full age, being duly sworn, according to law, upon his oath deposes and says: On July 1, 1924, I was before Vice-Chancellor Foster, in Newark, on a notice of motion given by Mr. Furst for an order to compel the Lakewood Trust Company to pay

*Petition of Louis S. Shane.*

the creditors represented by Mr. Furst, a true copy of said notice being annexed hereto and marked Exhibit "C," and referred to in Mr. Shane's affidavit. On July 1st, Mr. Furst mailed me a copy of order with a request that I advise him immediately whether or not it met with my approval. I wrote Mr. Furst as follows: 10

"July 2, 1924.

Messrs. Furst & Furst,  
164 Market Street,  
Newark, N. J.

Gentlemen:

*Re-Lawshane Company:*

Replying to your favor of July 1st, beg to advise that we object to the second ordering part of the order. We do not think Mr. Shane is under obligation to account to anyone, other than the Lakewood Trust Company, under the terms of the agreement referred to. 20

We say this because the Trust Company and Mr. Shane have been getting along very well and auditors are now at work on the books. Why should we be put to the expense to account to anybody else? 30

Very truly yours,

McDermott, Enright & Carpenter."

On July 9th, I received the following letter from Mr. Furst, together with a copy of order, which is hereto attached and marked Exhibit I. This is not a complete copy as Exhibit I shows.

*Petition of Louis S. Shane.*

"July 8, 1924.

McDermott, Enright & Carpenter, Esqs.,  
75 Montgomery St.,  
Jersey City, N. J.

Re-Law-Shane Co.

Gentlemen:

- 10 We are in receipt of your letter of the 2nd inst. We exhibited same to Vice-Chancellor Foster and he signed the enclosed order. He stated that he was of the opinion that your client should account directly to the receiver. Will you please send us a copy of the audit and also send one to Mr. Applegate, the receiver?

Very truly yours,

GF/DM

Furst &amp; Furst."

- 20 Deponent sent this copy of order on July 10th to Mr. Sherman, No. 25 Broadway, New York, and asked him to have an extra copy of the audit made for the Receiver, and send it to us so that we could forward it. I received a copy of the audit on July 16th, and that day mailed it to Mr. Applegate, which he acknowledged under date of July 17th.

- 30 On July 25th, I received by mail from Mr. Furst a notice of an application to Vice-Chancellor Foster, with a request that I acknowledge it for Mr. Shane. I returned this notice and copy to Mr. Furst with the following letter:

*Petition of Louis S. Shane.*

“July 25, 1924.

Messrs. Furst & Furst,  
164 Market Street,  
Newark, N. J.

Gentlemen:

Re-Lakewood Trust Company vs  
Lawshane Company, Inc.: 10

Re-Wallach & Behrend Co. Inc. vs  
Lawshane Company, Inc.:

Your letter of yestertay enclosing notice addressed to the writer as attorney for Louis S. Shane, is acknowledged.

Upon receipt of your notice I called up the New York attorney for Mr. Shane, who reminds us that we are not attorneys for Mr. Shane generally and that we cannot accept service of the notice for him. 20

Further we call your attention to the fact that Mr. Shane was not a party to either of the above actions, in which we appeared for and were paid by Sima Elisberg.

Not representing Mr. Shane in this matter, of course, I cannot acknowledge service for him. The original and copy of notice are therefore returned.

Very truly yours, 30

McDermott, Enright & Carpenter,

By James D. Carpenter, Jr.

JDC-GCB.  
Enc.”

Upon receipt of the notice from Mr. Furst I had telephoned to Mr. Sherman in New York and the contents of the letter is true and Mr. Sherman instructed me not to accept service of the notice for Mr. Shane and I did not communicate 40

*Petition of Louis S. Shane.*

10 directly with Mr. Shane about the notice, assuming that Mr. Furst or someone else would serve the notice upon him personally at the Hathaway Inn, Deal, or elsewhere. I did not hear from the matter again until on August 1st I received in the mail a copy of the order hereto attached marked Exhibit 2. I immediately called Mr. Sherman on the telephone, notified him of the order and on August 6, 1924, was retained by Mr. Shane to appear specially for him and apply to set aside the order as having been made without notice to him and as being illegal in that he was not a party to this suit either as complainant or defendant, and on the ground that under the contract between Mr. Shane and the other parties mentioned in the agreement hereto annexed marked Exhibit "A" and referred to in Mr. Shane's affidavit, Mr. Shane was not under obligation to pay any part of his share of the profits earned under the agreement to the Lawshane Company, Inc., to its Receiver or anyone else. I was never instructed by Mr. Shane to make an appearance for him in this cause, but I was retained by Sima Elisberg and did considerable work for her in this matter. When I appeared in court on July 1st I did so as solicitor for Mrs. Elisberg.

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JAMES D. CARPENTER, JR.

Subscribed and sworn to before me  
this 6th day of August, 1924.

HENRY A. OETJEN,  
(SEAL) Notary Public of New Jersey.

*Petition of Louis S. Shane.*

EXHIBIT "A."

WHEREAS, the Lakewood Trust Company is the holder of a mortgage upon the Elisberg Hotel at Lakewood, New Jersey, and has brought proceedings to foreclose said mortgage, and

WHEREAS, an action was brought wherein Wallace & Behrend Co., Inc. was complainant and The Lawshane Company, Inc. was defendant, in the Chancery Court of New Jersey, and

WHEREAS, a receiver was appointed in the aforesaid actions, and

WHEREAS, it is to the interest of The Lawshane Company, Inc., the owner of the equity in the aforesaid hotel, George A. Lawrence, who has or claims to have an interest therein as trustee, and the Lakewood Trust Company, the holder of the said mortgage, to bring about a sale of the aforesaid premises and to pay the creditors who have filed claims against The Lawshane Company, Inc., in the aforesaid actions, and

WHEREAS, Louis S. Shane of New York is desirous of purchasing the aforesaid property,

Now, THEREFORE, this agreement, made and entered into this 12th day of December, 1923, by and between THE LAKEWOOD TRUST COMPANY of New Jersey, GEORGE W. LAWRENCE, of Lakewood, New Jersey, THE LAWSHANE COMPANY, INC., a corporation organized under the laws of the State of New York, and LOUIS S. SHANE of New York, WITNESSETH:

That the said Louis S. Shane agrees to purchase the aforesaid property for the sum of three hundred and seventy-five thousand dollars (\$375,000); ten thousand dollars (\$10,000) to be paid upon the execution of this agreement, the receipt whereof is hereby acknowledged, and forty thousand dollars (\$40,000) on May 1, 1924,

*Petition of Louis S. Shane.*

and the balance subject to two mortgages in sums aggregating not exceeding three hundred and twenty-five thousand dollars (\$325,000) now a lien against the said premises.

10 That Louis S. Shane is to take immediate possession of the aforesaid hotel and to operate the same and is to pay interest on the first and second mortgages from the date hereof until May 1, 1924; taxes to be apportioned from this date to May 1, 1924; and an apportionment of the insurance premium from this date to May 1, 1924, which insurance shall not exceed the sum of three hundred and twenty-five thousand dollars (\$325,000).

20 That in addition thereto the said Louis S. Shane shall pay the sum of ten thousand dollars (\$10,000) to the Lakewood Trust Company which is to be used in payment of any and all indebtedness upon notes made, executed or endorsed by Mrs. Sima Elisberg, which said notes are now held by the Lakewood Trust Company and to be delivered upon payment of the aforesaid sum, payable \$5,000 on Feb. 26, 1924 and \$5,000 on April 30, 1924.

30 That, upon the payment of the balance of forty thousand dollars (\$40,000) on May 1, 1924, there shall be delivered to Louis S. Shane a bargain and sale deed of the said premises in Lakewood, New Jersey, known as The Elisberg Hotel property, the description in said deed to conform to the description of the deeds conveying said premises to George W. Lawrence as trustee and The Lawshane Company, Inc., if there be such deed of record; said deed or deeds of conveyance to be sufficient to convey a marketable title to said property, subject, however, to the two mortgages hereinabove mentioned  
40 and free from any and all other liens.

*Petition of Louis S. Shane.*

That there is to be executed and delivered to said Louis S. Shane a bill of sale conveying the right, title and interest of the said Lakewood Trust Company, George W. Lawrence and The Lawshane Company, Inc. in and to all the chattels now in the said hotel or elsewhere belonging to the said hotel, whether the same are held by George W. Lawrence, The Lawshane Company, Inc., or are in the possession of any other person, free and clear of any claims of the Lakewood Trust Company, George W. Lawrence, trustee, and Gimbel Brothers, Inc., or any mortgages which may have been executed by the Lakewood Trust Company, George W. Lawrence, trustee, or The Lawshane Company, Inc. 10

That upon the delivery of the said deed to the said Louis S. Shane, said Louis S. Shane agrees to deliver a quit claim deed to be delivered by Sima Elisberg to the Lakewood Trust Company of all right, title and interest to the Lorraine Hotel property located at Edgemere, Long Island. 20

It is further agreed that the Lakewood Trust Company may execute a deed of the Lorraine Hotel on or before May 1, 1924, to any purchaser it may obtain for the Lorraine Hotel and that the proceeds of any such sale shall be held in escrow by the Lakewood Trust Company, until May 1, 1924, and that upon the delivery of the deed to Louis S. Shane and the payment of the said \$40,000 to the Lakewood Trust Company, the said sum realized from the sale of the Lorraine Hotel shall be the absolute property of the Lakewood Trust Company and said Sima Elisberg shall execute a release of any and all interest to the chattels in the Lorraine Hotel, including silverware, china, linen, 30 40

*Petition of Louis S. Shane.*

furniture, bedding, rugs, etc., which at the present time are located in said Lorraine Hotel or elsewhere.

10 That upon delivery of the aforesaid instruments and the full performance of this contract all actions brought by Sima Elisberg against Lakewood Trust Company and George W. Lawrence or Lawshane Company shall be discontinued and all actions brought by Lakewood Trust Company shall be discontinued and that releases be exchanged between all the parties to this agreement and Sima Elisberg.

20 That Lakewood Trust Company, upon the passing of title as aforesaid, will deliver to Louis S. Shane all notes or other evidence of indebtedness held by Lakewood Trust Company or George W. Lawrence made, executed or endorsed by Sima Elisberg, or any members of her family, and any other evidence of indebtedness by Sima Elisberg arising out of the construction or operation of said Hotel Elisberg at Lakewood, New Jersey.

30 It is further agreed that in the event that L. Barth & Son or the assignee of the mortgage executed to L. Barth & Son refuses to accept \$25,000 out of the \$50,000 purchase price herein mentioned and discontinue his foreclosure suit of his said mortgage, in part payment of the second mortgage and to issue to the Lakewood Trust Company a participating certificate to the extent of \$25,000 in said second mortgage, on or before May 1, 1924, this contract shall be at an end and the Lakewood Trust Company shall return to Louis S. Shane the said sum of \$10,000 hereinabove first mentioned, the title to all chattels said Shane may bring to the hotel shall remain undetermined and unaffected by their  
40 return to the hotel.

*Petition of Louis S. Shane.*

Said Louis S. Shane further agrees to give to the Lakewood Trust Company one-half of any and all profits arising out of the operation of said hotel from date to May 1, 1924, inclusive, provided title shall not pass as aforesaid.

Any valid unsecured indebtedness now existing against the Lawshane Co. Inc., and, if necessary, established in a legal way that shall be proven before the Receiver within the time limited by law shall be paid by the Lakewood Trust Company. 10

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

LOUIS S. SHANE (L. S.)

Signed, sealed and delivered in the presence of 20

GEO. W. LAWRENCE,  
Lawshane Co. Inc.

GEO. W. LAWRENCE,  
Pres.  
Lakewood Trust Co.

G. G. SMITH,  
Pres. (SEAL)  
Asst. Secretary.

(SEAL LAKEWOOD TRUST Co.) 30

*Petition of Louis S. Shane.*

EXHIBIT "B."

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>		
10		LAKWOOD TRUST COMPANY, <i>Complainant,</i>	} <i>On bill, etc.</i> <i>Order.</i>
	<i>and</i>		
		LAWSHANE COMPANY, INC., <i>et al.,</i>	
		<i>Defendants.</i>	
		_____	
		WALLACH & BEHREND CO., INC.,	
		<i>Complainant.</i>	
20	<i>and</i>		
		LAWSHANE COMPANY, INC., <i>Defendant.</i>	

It being represented to the court by agreement signed by The Lakewood Trust Company, Lawshane Company, Inc. George W. Lawrence and Louis Shane, and shown to the court that there is no longer any reason for the continuance of the active performance by John S. Applegate, Jr., Receiver of the Lawshane Company Inc., of his duties as such Receiver, and that he should be discharged from the further possession of the Elisberg Hotel at Lakewood, and that surrender thereof should be made in accordance with the terms of said agreement, to Louis Shane, and it appearing that satisfactory arrangement has been made by which the valid claims of all unsecured creditors of the Lawshane Company, Inc., will be paid, together with

*Petition of Louis S. Shane.*

the fees of the said Receiver and the costs of Wallace & Behrend Co., Inc., together with a counsel fee of \$500.00 and no reason appearing to the contrary.

It is thereupon on this twelfth day of December, 1923, on motion of Robert H. McCarter of Counsel with the Lakewood Trust Company, one of the above named complainants, ORDERED that possession of the Elisberg Hotel be forthwith, by said Receiver, surrendered to Louis Shane, and that thereafter, the said Receiver be and he is hereby relieved from all further duties or responsibilities in connection with the said hotel and its contents and that such possession is so to be transferred to said Louis Shane with the understanding that the said agreement hereinabove referred to will in all respects be carried out and performed:

AND IT IS FURTHER ORDERED that the said Receiver be paid the sum of \$3,500.00 together with his disbursements and obligations, not to exceed the sum of \$900 and that the said Wallach & Behrend Co. Inc., be paid their costs to be taxed, and a counsel fee to their counsel Messrs. Furst & Furst of \$500.00.

AND IT IS FURTHER ORDERED that in the event of the performance by all the parties of the said agreement (a copy whereof is hereto annexed), the said John S. Applegate, Receiver as aforesaid, shall execute and deliver to the said Louis Shane a deed conveying all his right, title and interest in and to the said Elisberg Hotel, and the chattels in connection therewith.

Respectfully advised,

JOHN E. FOSTER,

V.-C.

*Petition of Louis S. Shane.*

EXHIBIT "C."

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>		
10	LAKESWOOD TRUST COMPANY, <i>Complainant,</i>	}	
	<i>and</i>		
	LAWSHANE COMPANY, INC., <i>et al.,</i>		
	<i>Defendants.</i>		
	WALLACH & BEHREND CO., INC.,		
	<i>Complainant,</i>		
20	<i>and</i>		
	LAWSHANE COMPANY, INC., <i>Defendant.</i>		
			<i>On Bill, etc.</i> <i>Notice.</i>

To Halsted H. Wainwright, Esq., attorney for  
Lakewood Trust Co.

James D. Carpenter, Esq., attorney for Louis  
Shane and Sima Elisberg.

30 Benjamin Frindel, Esq., John S. Applegate,  
Esq., receiver of Lawshane Company, Inc.

Gentlemen:

PLEASE TAKE NOTICE, that we will apply to the  
Chancellor, at the Chancery Chambers, Pruden-  
tial Building, Newark, N. J., on the 1st day of  
July, 1924, at 10 o'clock (daylight saving time)  
in the forenoon, or as soon thereafter as counsel  
can be heard;

40 1. For an order directing the Lakewood  
Trust Company to pay the following unsecured

*Petition of Louis S. Shane.*

creditors, whose claims have been filed with John S. Applegate, Receiver of the above named defendant company:

O. J. Gude Co. ....	\$1,984.00	
Ocean County Motor Trucking Co. ....	100.00	
Wilson & Co. ....	235.25	
E. Douglas Applegate .....	116.95	10
Wallach & Behrend Co. ....	643.33	
Eugene R. Trott Co. ....	114.31	
R. C. Williams & Co. Inc. ....	172.46	
Knickerbocker Leather Co. ....	900.00	
Belmar Laundry Co. Inc. ....	584.99	
Gregory Canales .....	327.55	

2. For an order directing John S. Applegate, the Receiver herein to take possession of all of the assets of the defendant company.

3. For an order directing the Lakewood Trust Company and Louis S. Shane to account for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date that the said Louis S. Shane took possession of the said hotel pursuant to an agreement hereinafter referred to.

4. For such further order and relief that may be just and proper in the premises.

This notice is given pursuant to an agreement made by and between The Lakewood Trust Company, George W. Lawrence, The Lawshane Company, Inc., and Louis S. Shane, wherein and whereby it provided (1) that any valid unsecured indebtedness now existing against the Lawshane Co. Inc., and if necessary, established in a legal way that shall be proven before the Receiver within the time limited by law, shall be paid by the Lakewood Trust Company, and

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*Petition of Louis S. Shane.*

(2) that Louis S. Shane agrees to give to the Lakewood Trust Company one-half of any and all profits arising out of the operation of said hotel from date to May 1, 1924 inclusive, provided title shall not pass as aforesaid.

Yours truly,

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FURST & FURST,  
Attorneys for Creditors.

EXHIBIT 1.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	} <i>On Bill, etc.</i> <i>Order.</i>
20	LAKWOOD TRUST COMPANY, <i>Complainant,</i>	
	<i>and</i>	
	LAWSHANE COMPANY, INC., <i>et al.,</i>	
	<i>Defendants.</i>	
	_____	
	WALLACH & BEHREND CO., INC.,	
30	<i>Complainant,</i>	
	<i>and</i>	
	LAWSHANE COMPANY, INC., <i>Defendant.</i>	

This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend and other creditors, upon the return of a notice directed to the Lakewood Trust Company, one of the complainants herein, John S. Applegate, the receiver appointed herein, Louis S. Shane, Ben-

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*Petition of Louis S. Shane.*

jamin Frindel and Sima Elisberg, for an order directing the Lakewood Trust Company to pay certain unsecured creditors whose claims were filed with and allowed by the Receiver, John S. Applegate; for an order directing John S. Applegate, the Receiver, to take possession of the assets of the defendant company, and for an order directing the Lakewood Trust Company and Louis S. Shane to account for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date that the said Louis S. Shane took possession of the said hotel pursuant to a certain agreement made by and between the Lakewood Trust Company, George W. Lawrence, The Lawshane Company, Inc., and Louis S. Shane; and it appearing that all of the said parties were duly served with the said notice and that a proof of service has been filed with this Court, and after hearing George Furst, of Furst & Furst, in support of the said motion, and Halsted H. Wainwright in opposition thereto, it is on this day of July, 1924, on motion of Furst & Furst, solicitors as aforesaid,

ORDERED: That John S. Applegate, the Receiver, be and he is hereby authorized and directed to take possession of all the assets of the Lawshane Company, Inc.; and it is further

ORDERED: That the Lakewood Trust Company and Louis S. Shane account to the said Receiver, John S. Applegate, for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date the said Louis S. Shane took possession pursuant to agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane; and it is further

*Petition of Louis S. Shane.*

ORDERED: That the direction to the Lakewood Trust Company to pay the unsecured creditors whose claims have been filed with and allowed by the Receiver be held in abeyance until the further order of the court.

Respectfully advised,

10

V.C.

## EXHIBIT 2.

## IN CHANCERY OF NEW JERSEY.

*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

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*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendant.*

*On Bill, &c.  
Order.*

WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

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*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein and it appearing that Louis S. Shane has operated the hotel of the defendant company located at Lakewood, New Jersey, pursuant to an agreement  
40 made and entered into December 12, 1923, by and

*Petition of Louis S. Shane.*

between the Lakewood Trust Company, George W. Lawrence, The Lawshane Company, Inc., and Louis S. Shane, and it appearing that the operation of the said hotel by the said Louis S. Shane, produced a profit of \$19,370.32, and it appearing that an order was made by the Court herein directing the said Lakewood Trust Company and the said Louis S. Shane to account to the receiver herein for the operation of the hotel, and after hearing George Furst of Furst & Furst, in support of said motion, and Halsted H. Wainright, in opposition thereof, it is, on this 31st day of July, 1924, on motion of Furst & Furst, attorneys aforesaid

ORDERED: That Louis S. Shane and the Lakewood Trust Company, their attorneys, agents or employees, and any and all persons who have received said sum of \$19,370.32 or any part thereof, be and they are hereby directed to pay to John S. Applegate, the Receivers herein, any and all sums of money received by them from the operation of the said hotel, during the season of 1923 and 1924 within ten days from the date of the service of a true copy of this order.

Respectfully advised,

EDWIN ROBERT WALKER. 30

JOHN H. FOSTER,  
V.-C.

*Petition.*

**Petition.**

Filed August 15, 1924.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LAKEWOOD TRUST COMPANY, <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC., <i>et al.,</i>  <i>Defendants.</i>	}	<i>On Bill, etc.</i> <i>Petition.</i>
20	WALLACH & BEHREND Co., INC.,  <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC., <i>Defendant.</i>		

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

30 The petition of the undersigned respectfully shows and alleges:

1. That a bill of complaint was filed herein by the above-named complainant, Wallach & Behrend Co., Inc., against the above-named defendant company, which prayed among other things that a Receiver be appointed.

40 2. That a bill of complaint was filed by the above-named complainant, Lakewood Trust Company, against the said defendant company, to foreclose a certain mortgage, which prayed among other things that a Receiver be appointed.

*Petition.*

3. Thereafter, the said suits were consolidated and an order was made by the Court herein appointing John S. Applegate, Receiver.

4. That the said Receiver duly qualified and took possession of the assets of the defendant company, and more particularly a hotel owned by it known as the Elisberg Hotel, Lakewood, N. J. 10

5. That during the said proceeding, Louis S. Shane entered into an agreement on December 12, 1923, with the Lakewood Trust Co., George W. Lawrence and the defendant company, a true copy of which is hereto annexed and marked Exhibit "A," reference to which is made as if herein recited in full.

6. An order was made by the Court herein upon the filing of the said agreement permitting the Receiver herein to release possession of the aforementioned hotel. Pursuant to the said order, the Receiver did release possession of the said hotel, and the said Louis S. Shane used and occupied the said hotel, operating the business during the season of 1923 and 1924. 20

7. At the expiration of the said season of 1924, the parties to the agreement marked Exhibit "A" failed to carry out the same. 30

8. That thereupon the Court herein made an order, a copy of which is hereto annexed and marked Exhibit "B"; that after the entry of the said order marked Exhibit "B," an accounting was made, and it showed a profit of \$19,370.32, and thereupon the Court made an order, copy of which is hereto annexed and marked Exhibit "C." 40

*Petition.*

9. That the said order was duly served upon the said Louis S. Shane and the Lakewood Trust Company.

10 Thereafter, to wit, on the 12th day of August, 1924, Louis S. Shane, by his attorneys, McDermott, Enright & Carpenter, applied to the Court herein for an order to set aside the said order marked Exhibit "C."

WHEREFORE, your petitioner prays that an order may be made directing the Lakewood Trust Company and Louis S. Shane to comply with the order made herein on July 31, 1924, and marked Exhibit "C."

FURST & FURST,  
Solicitors for Wallach & Behrend Co., Inc.

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

30 TOBY FURST, being duly sworn, on his oath deposes and says: That he is a member of the firm of Furst & Furst, solicitors for the complainant, Wallach & Behrend Co., Inc.; that the statements of fact contained in the foregoing petition are true, except those matters therein alleged to be upon information and belief, and as to those matters, he believes same to be true.

TOBY FURST.

Subscribed and sworn to before me  
this 14th day of August, 1924.

CHARLES ROSENTHAL,  
An Attorney at Law of N. J.

*Order to Show Cause.*

**ORDER.**

Filed August 15, 1924.

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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*On Bill, etc.*

*Order.*

20

This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, and it appearing that on July 31, 1924, an order was made directing Louis S. Shane and the Lakewood Trust Company, their attorneys, agents or employees, and any and all persons who have received the sum of \$19,370.32, or any part thereof, to pay to John S. Applegate, the Receiver herein, the said sum of \$19,370.32, or any and all sums of money received by them from the operation of the said hotel; and it appearing that the said Louis S. Shane appeared by McDermott, Enright & Carpenter, specially for the purpose of setting aside the said order, and

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*Order to Show Cause.*

after hearing James Carpenter, of McDermott, Enright & Carpenter, in support of the said motion, and Charles Rosenthal, of Furst & Furst, in opposition thereto, it is, on this 15th day of August, 1924, on motion of Furst & Furst, attorneys aforesaid,

10 ORDERED, That Louis S. Shane and the Lakewood Trust Company, show cause before the Chancellor, at the Chancery Chambers, in the City of Trenton, on the 26th day of August, 1924, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made directing the said Louis S. Shane and the Lakewood Trust Company to comply with the order made herein on July 31, 1924; and it is further

20 ORDERED, That service of a true copy of this order, which need not be certified, together with a true copy of the annexed petition, upon the said Louis S. Shane and on his attorneys, McDermott, Enright & Carpenter, and the Lakewood Trust Company, and on its attorney, Halsted H. Wainright, within five days from the date hereof, shall be deemed good and sufficient service.

EDWIN ROBERT WALKER,  
C.

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Respectfully advised,

JOHN E. FOSTER,  
V.-C.

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*Affidavit of Service.*

**AFFIDAVIT.**

(Filed August 22, 1924.)

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC., *et*  
*al.,*  
*Defendants.*

*On Bill, etc.*  
*Affidavit.*

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WALLACH & BEHREND CO.,  
INC.,  
*Complainant,*

20

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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

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SAMUEL SAMUELSON, being duly sworn, on his oath according to law, deposes and says: That he is a clerk in the office of Furst & Furst, attorneys for Wallach & Behrend Co., Inc., the complainant in the above-entitled cause of action; that on August 20, 1924, he served a copy of an order entered on August 15, 1924, and returnable August 26, 1924, together with the petition and exhibits annexed thereto, on McDermott, Enright & Carpenter, by leaving same

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*Order of Continuance.*

with James D. Carpenter, Jr., who is associated with the said firm.

SAMUEL SAMUELSON.

Sworn and subscribed to before me  
this 20th day of August, 1924.

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RAYMOND H. COHEN,  
An Attorney at Law of New Jersey.

**ORDER.**

Filed August 22, 1924.

IN CHANCERY OF NEW JERSEY.

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*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

*On Bill, etc.*  
*Order.*

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WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

This matter being opened to the Court by  
Furst & Furst, solicitors for the complainant,  
Wallach & Behrend Co., Inc., and it appearing

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*Order of Continuance.*

that an order to show cause was issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and it appearing that the said order to show cause should be continued, it is, on this 22nd day of August, 1924, on motion of Furst & Furst, solicitors as aforesaid,

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ORDERED, That the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, be and the same is hereby continued to September 2, 1924, before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., and it is further

ORDERED, That service of a true copy of this order, together with a true copy of the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, and a true copy of the petition annexed thereto, which orders need not be certified, upon Louis S. Shane, within seven days from the date hereof shall be deemed good and sufficient service.

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EDWIN ROBERT WALKER.

C.

Respectfully advised,

JOHN E. FOSTER.

V.-C.

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*Order.***ORDER.**

Filed September 2, 1924.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LAKEWOOD TRUST COMPANY, <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC., <i>et al.,</i>  <i>Defendants.</i>	} <i>On Bill, &amp;c.</i> <i>On Petition,</i> <i>&amp;c.</i>
20	<hr style="width: 50%; margin: 0 auto;"/> WALLACH & BEHREND Co., INC.,  <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC.,  <i>Defendant.</i>	

This matter coming on to be heard on notice given by McDermott, Enright & Carpenter, solicitors specially appearing for Louis S. Shane, petitioning to set aside an order of the Court made July 31, 1924, so far as it applies to the said Louis S. Shane, and for no other purpose, and the petition and affidavits and original notice and proof of service thereof having been filed, and in the presence of John S. Applegate, Receiver of Lawshane Company, Inc., Furst & Furst, solicitors for certain creditors, and Halsted H. Wainright, solicitor for Lakewood Trust Company, and the Court deciding that the matters set forth in the said petition should be continued to a later date, and be considered together

*Order.*

with an application which the Court directs the Receiver to make for an order compelling the Lakewood Trust Company and Louis S. Shane to pay over certain moneys claimed by said Receiver,

It Is thereupon on this 12th day of August, 1924,

ORDERED, that the application of McDermott, Enright & Carpenter, solicitors appearing specially for Louis S. Shane, to set aside an order of this Court made July 31, 1924, and for no other purpose, and all matters thereon, be continued to and until September 2, 1924.

AND IT IS FURTHER ORDERED, that John S. Applegate, Receiver of Lawshane Company, Inc., or Furst & Furst, solicitors for certain creditors, prepare in the meantime a petition for the relief they desire and effect legal service of notice of their application, or of a rule to show cause to be hereafter issued for the purpose, upon both the Lakewood Trust Company and Louis S. Shane.

E. R. WALKER,  
C.

Respectfully advised,

JOHN E. FOSTER,  
V.-C.

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*Order.***ORDER.**

Filed September 4, 1924.

IN CHANCERY OF NEW JERSEY.

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*Between*LAKEWOOD TRUST COMPANY,  
*Complainant,**and*LAWSHANE COMPANY, INC.,  
*et al.,**Defendants.*WALLACH & BEHREND Co.,  
INC.,

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*Complainant,**and*LAWSHANE COMPANY, INC.,  
*Defendant.**On Bill, etc.  
Order.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, and it appearing that an order to show cause was issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and which said order to show cause was continued until September 2, 1924, and it appearing that the matter should be further continued, it is, on this 2nd day of September, 1924, on motion of Furst & Furst, solicitors aforesaid, in the presence of Halsted H. Wainright, attorney for Lakewood Trust Company, and James D. Carpenter, of McDer-

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*Order.*

mott, Enright & Carpenter, appearing specially for Louis S. Shane,

ORDERED, That the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and continued until September 2, 1924, be and the same is hereby continued until September 16, 1924, before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., and it is further

ORDERED, That Louis S. Shane be, and he is hereby directed to show cause before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., on September 16, 1924, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made directing the said Louis S. Shane to account to the Receiver herein for the operation of the hotel owned by the defendant company from the date the said Louis S. Shane took possession pursuant to an agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane; and it is further

ORDERED, That the said Louis S. Shane be, and he is hereby directed to pay to John S. Applegate, the Receiver herein, any and all sums of money received by him from the operation of the said hotel during the season of 1923-1924, within ten days from the date of the service of this order; and it is further

ORDERED, That service of a true copy of this order, which need not be certified, together with a true copy of the petition upon which the order to show cause of August 15, 1924, was issued, upon Louis S. Shane, within ten days from the

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*Order of Continuance.*

date hereof, shall be deemed good and sufficient service.

EDWIN R. WALKER,  
C.

Respectfully advised,

10 JOHN E. FOSTER,  
V.-C.

**ORDER OF CONTINUANCE, &c.**

(Filed September 8, 1924.)

IN CHANCERY OF NEW JERSEY.

20	<i>Between</i> LAKEWOOD TRUST COMPANY, <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC., <i>et</i> <i>al.,</i>  <i>Defendants.</i>	} <i>On Bill, etc.</i> <i>Order.</i>
30	WALLACH & BEHREND Co., INC.,  <i>Complainant,</i>  <i>and</i> LAWSHANE COMPANY, INC., <i>Defendant.</i>	

40 This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, and it

*Order of Continuance.*

appearing that an order to show cause was issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and which said order to show cause was continued until September 2, 1924, and it appearing that the matter should be further continued, it is, on this 2nd day of September, 1924, on motion of Furst & Furst, solicitors aforesaid, in the presence of Halsted H. Wainright, attorney for Lakewood Trust Company, and James D. Carpenter, of McDermott, Enright & Carpenter, appearing specially for Louis S. Shane,

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ORDERED, that the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and continued until September 2, 1924, be and the same is hereby continued until September 16, 1924, before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., and it is further

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ORDERED, that Louis S. Shane be, and he is hereby directed to show cause before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, N. J., on September 16, 1924, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made directing the said Louis S. Shane to account to the receiver herein for the operation of the hotel owned by the defendant company from the date the said Louis S. Shane took possession pursuant to an agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane; and it is further

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ORDERED, that the said Louis S. Shane be, and he is hereby directed to pay to John S. Apple

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*Order of Continuance.*

gate, the Receiver herein, any and all sums of money received by him from the operation of the said hotel during the season of 1923-1924, within ten days from the date of the service of this order; and it is further

10 ORDERED, that service of a true copy of this order, which need not be certified, together with a true copy of the petition upon which the order to show cause of August 15, 1924, was issued, upon Louis S. Shane, within ten days from the date hereof, shall be deemed good and sufficient service.

E. R. WALKER,  
C.

Respectfully advised,

20 JOHN E. FOSTER,  
V.-C.

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*Affidavit of Service.*

**AFFIDAVIT OF SERVICE.**

(Filed September 13, 1924.)

IN CHANCERY OF NEW JERSEY.

*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

WALLACH & BEHREND Co.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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*On Bill, etc.*

*Affidavit of  
Service.*

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

PHILIP F. ERHARDT, being duly sworn, on his oath according to law, deposes and says:

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That he served upon Louis S. Shane personally, on September 9, 1924, a true copy of an order to show cause issued here in on August 15, 1924, together with a copy of the petition upon which the said order was made, as well as a copy of another order issued herein on September 2, 1924.

PHILIP F. ERHARDT.

40

*Order of Continuance.*

Subscribed and sworn to before me  
this 11th day of September, 1924.

JOSEPH WILNENTE,  
Notary Public of N. J.

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**ORDER OF CONTINUANCE.**

Filed September 18, 1924.

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*

*Defendants.*

WALLACH & BEHREND CO.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

*On Bill, etc.  
Order.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein upon the return of an order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and continued from time to time until September 16, 1924, and it appearing

*Order of Continuance.*

that service of the said order to show cause was made in accordance with the Court's direction upon the said Lakewood Trust Company and Louis S. Shane, and upon reading and filing the answers of the said Lakewood Trust Company and Louis S. Shane to the petition upon which the said order to show cause of August 15, 1924, was issued, and after hearing Robert H. McCarter, of McCarter & English, solicitors for Lakewood Trust Company, and James D. Carpenter, of McDermott, Enright and Carpenter, solicitors for Louis S. Shane, it is, on this 16th day of September, 1924, on motion of Furst & Furst, solicitors as aforesaid,

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ORDERED, That December 5, 1924, at 10:30 o'clock in the forenoon, at the Chancery Chambers, Long Branch, New Jersey, be and the same is hereby designated as the time and place for the hearing of the issues raised by the said petition upon which the order to show cause was issued on August 15, 1924, and the answers of the Lakewood Trust Company and Louis S. Shane thereto; and it is further

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ORDERED, That the order to show cause issued herein on August 15, 1924, directed to the said Lakewood Trust Company and Louis S. Shane, and continued from time to time be and the same is hereby continued to December 5, 1924, and until the determination of the issue hereinbefore referred to.

30

E. R. WALKER,  
C.

Respectfully advised,

JOHN E. FOSTER,  
V.-C.

40

*Order for Hearing.*

**ORDER FOR HEARING.**

(Filed December 15, 1924.)

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>LAKESWOOD TRUST COMPANY, <i>et al.,</i></p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LAWSHANE COMPANY, <i>et al.,</i> <i>Defendants.</i></p>	<p style="font-size: 4em;">}</p> <p><i>Order Designating Time and Place of Hearing.</i></p>
----	--	---

20 The foregoing entitled cause having been referred to the undersigned, it is ORDERED, that the further hearing of this cause be continued at the Chancery Chambers in the City of Newark, in the State of New Jersey, on Thursday, the 8th day of January, 1925, at the hour of 10:00 o'clock in the forenoon.

Dated, December 15, 1924.

E. R. WALKER,  
C.

30 Respectfully advised,

JOHN E. FOSTER,  
V.-C.

40

*Answer of Louis S. Shane.*

**ANSWER OF LOUIS S. SHANE.**

Filed September 20, 1924.

IN CHANCERY OF NEW JERSEY.

*Between*

LAKESWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*et al.,*  
*Defendants.*

WALLACH & BEHREND CO.,  
INC.,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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*On Bill to  
Foreclose.*

*On Bill for  
Receiver.*

*Answer.*

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The answer of Louis S. Shane, a resident of the Borough of Brooklyn, State of New York, to the petition of Furst & Furst, solicitors of Wallach & Behrend Co., Inc., respectfully shows as follows:

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**FIRST DEFENSE.**

Said Louis S. Shane says that he is not a party to either of the above-entitled causes and had not been served with process herein (other than the following papers: An uncertified copy of an order made herein and dated September 2, 1924; an uncertified copy of an order made herein August 15, 1924, and an uncertified copy of a petition made by Furst & Furst, solicitors

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*Answer of Louis S. Shane.*

for Wallach & Behrend Co., Inc., verified August 14, 1924, together with the papers attached thereto consisting of copy of an agreement between Lakewood Trust Company and Louis S. Shane, dated December 12, 1923; copy of the order of the Court approving the same, dated  
 10 the            day of July, 1924, and an uncertified copy of an order made herein July 31, 1924, which uncertified copies were served upon him at Deal, New Jersey, on Tuesday, September 9, 1924.

Said Louis S. Shane therefore says that this Court does not have jurisdiction over him for the purpose

(a) Of compelling him to account to John S. Applegate, Jr., Esq., Receiver of Lawshane Company, Inc., or  
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(b) For the purpose of compelling him to pay over to the said John S. Applegate, Jr., any sum or sums of money, or for any other purpose or purposes; and that if the Receiver desires to commence an action for any such accounting or for the purpose of recovering any money from him, said Louis S. Shane prays that an appropriate original action may be started either  
 30 at law or in equity which the said Louis S. Shane may defend in the regular way and have the benefit of a trial by jury, if an action at law is instituted, or may have the benefit of all the rights of a non-resident defendant if an action is started either at law or in equity.

## SECOND SEPARATE DEFENSE.

By way of second separate defense to the petition of the said petitioner, said Louis S. Shane  
 40 says that the said petition sets forth no cause

*Answer of Louis S. Shane.*

of action against the said Louis S. Shane and shows no obligation on the part of Louis S. Shane to pay to Wallach & Behrend Co., Inc., or John S. Applegate, Jr., Receiver, or any other person, any money or any of the profits that were realized from the operation of the Elisberg Hotel, Lakewood, New Jersey, during the season 1923-1924. 10

## THIRD SEPARATE DEFENSE.

Said Louis S. Shane by way of third separate defense to the petition aforesaid says that under and pursuant to the terms of the agreement between him and the Lakewood Trust Company it was distinctly understood and agreed and the agreement so recites:

“Any valid unsecured indebtedness now existing against the Lawshane Co., Inc., and if necessary, established in a legal way, that shall be proven before the Receiver within the time limited by law, shall be paid by the Lakewood Trust Company.” 20

Further under and pursuant to the terms of said agreement and the order of the Court approving the same, there was no obligation at law or in equity on behalf of Louis S. Shane to pay any sum or sums of money either to the Receiver or to any creditor or creditors of the Lawshane Company, Inc., and the said agreement provided in terms (a) that the Receiver's fees should be paid by the Lakewood Trust Company (which fees it is alleged were paid in full by said company), (b) that the solicitor for the creditors of Lawshane Company, Inc., should be paid a counsel fee by the Lakewood Trust Company (which fee it is alleged was paid), and that thereafter the Receiver of Lawshane Company, Inc., should have nothing to do with the opera- 30 40

*Answer of Louis S. Shane.*

tion of the Elisberg Hotel, should not have or be entitled to receive any of the profits arising from the operation of the said hotel, should be responsible for none of the losses of the said hotel, if any, and that pursuant to the said agreement all the rights and obligations arising therefrom should be given to Louis S. Shane solely under the terms of said agreement dated December 12, 1923, which was expressly approved by the Court.

## FOURTH SEPARATE DEFENSE.

Said Louis S. Shane by way of fourth separate defense to the said petition, and without waiving any of the defenses heretofore interposed, repeats the allegation of his petition for leave to appear specially to attack the legality of an order made in this cause July 31, 1924, and to set aside the same as applying to him, verified August 6, 1924, and prays that the same may be incorporated in this answer by reference, without the necessity of copying the same at length in this answer, and that he may have the benefit of all the allegations in the said petition and all the exhibits attached thereto.

And the said Louis S. Shane hereby expressly refers to all of the pleadings, petitions and orders filed in the two above-entitled causes, and alleges that the said Louis S. Shane prior to the making of the agreement hereinabove referred to of December 12, 1923, was at no time the owner or lessee of the Elisberg Hotel, nor the owner of any stock in either the Lawshane Company, Inc., or the Elisberg Hotel Construction Company, or any other firm or corporation that ever did own the said hotel; that prior to the making of the said agreement of December 12,

*Answer of Louis S. Shane.*

1923, the said Louis S. Shane was in the business of manufacturing and selling dresses in the City of New York, and only entered into the said agreement because he saw an opportunity to operate the said hotel during the season 1923-1924 at a profit and saw an opportunity to purchase the said hotel advantageously; that the only reason he did not take title to the said hotel under the terms of the said agreement was because the second mortgagee, L. Barth & Son, refused to discontinue a foreclosure suit which he had pending in this Court to foreclose the second mortgage on the said mortgage, said mortgage amounting to over \$200,000, and the foreclosure suit having proceeded and the property having been sold in the said suit during the month of August, 1924.

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WHEREFORE Louis S. Shane prays that this Court may refuse to entertain any jurisdiction over him and may order the said petition to be dismissed.

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McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel  
with Louis S. Shane.

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

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LOUIS S. SHANE, of full age, being duly sworn, according to law upon his oath deposes and says: I am a resident of the Borough of Brooklyn, City and State of New York. Prior to the making of the agreement referred to in the foregoing answer dated December 12, 1923, I had absolutely no interest of any kind in the Elsieberg Hotel, Lakewood, New Jersey. I entered

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*Answer of Louis S. Shane.*

into the said agreement solely because I saw an opportunity to make some money in the operation of the said hotel. Prior to the making of the said agreement I was a manufacturer of ladies' dresses, engaged in business in the City of New York. After making the said agree-  
10 ment I sold out my interest in said business and devoted all of my time in the winter of 1923-1924 to the operation of the Elisberg Hotel. I paid down \$10,000 cash of my own on the making of the said agreement and advanced considerable more funds of my own to get the hotel in running condition and to make repairs that were immediately necessary. At no time during the negotiation for the said lease or agreement, nor during my operation of the said hotel was it  
20 claimed by anyone that the Receiver of Lawshane Company, Inc., had any claim or right to any of the profits from the operation of the said hotel. This subject was not even discussed during the negotiation for the said agreement. Had it been contended before the said agreement was executed that the said Receiver would have any claim upon any profits or receipts from the operation of the said hotel I would never have  
30 executed the said agreement or advanced a single dollar of my money for the opening or the operation of the said hotel. I devoted all of my time from December 12, 1923, until the close of the Lakewood season in the operation of the said hotel, my wife devoted all of her time to the operation of the said hotel and I paid one-half of all of the profits to the Lakewood Trust Company pursuant to the terms of the said agreement, and I also gave Mrs. Sima Elisberg one-half of my share of the profits for the return of the chattels which had formerly been  
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*Answer of Louis S. Shane.*

used in the Elisberg Hotel, which were outside the jurisdiction of this Court and were absolutely necessary for the operation of the said hotel. The gross amount that I personally made in the operation of the said hotel through the services of myself and my wife and the use of my own funds was less than \$5,000.

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There were absolutely no conditions to my taking over the operation of the said hotel other than those contained in the agreement of December 12, 1923. It was the intention of the said agreement, so far as I understood it, that the Lakewood Trust Company out of the money that I paid should pay off all of the creditors of Lawshane Company, Inc. This was due to the fact that as I understood it the Lakewood Trust Company really owned and caused the Lawshane Company, Inc., to be incorporated. All of the stock of Lawshane Company, Inc., was held by the stockholders for the Lakewood Trust Company, and it is my understanding that the Lakewood Trust Company was responsible for the payment of every debt owed by the Lawshane Company, Inc., and under the said agreement of December 12, 1923, the Lakewood Trust Company agreed to pay these creditors.

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(Illegible)

LOUIS S. SHANE.

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Subscribed and sworn to before me  
this 16th day of September, 1924.

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*Answer of the Lakewood Trust Company.*

**ANSWER OF THE LAKEWOOD TRUST  
COMPANY.**

Filed September 18, 1924.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAKEWOOD TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAWSHANE COMPANY, INC., <i>et al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill, etc.</i></p> <p><i>Answer of</i></p> <p><i>the Lake-</i></p> <p><i>wood Trust</i></p> <p><i>Company.</i></p>
20	<p style="text-align: center;">WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAWSHANE COMPANY, INC., <i>Defendant.</i></p>	

30 The Lakewood Trust Company, in answer to the petition filed herein by Furst & Furst as solicitors for Wallach & Behrend Co., Inc., respectfully shows that the first seven allegations of said petition are in the main correct, and this defendant refers particularly to the said agreement attached to said petition and particularly to the provisions on the second page thereof providing for the payment to the defendant by the said Shane of \$10,000 in two installments on the 26th of February, 1924, and on the 30th of April, 1924; that the only monies this defendant has had from said Shane under and pursuant to said agreement are the \$10,000, which

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*Answer of the Lakewood Trust Company.*

were paid to it by said Shane at the time said agreement was executed, and the two sums of \$5,000 each paid on or about the 26th of February and the 30th of April, 1924, as provided under said agreement. This defendant denies that said payments were made to this defendant from the proceeds of the operation of the Elisberg Hotel and insists that they were paid with funds of the said Shane to this defendant pursuant to said contract, and that at the time they were made this defendant surrendered notes of great value to said Shane, which belonged to this defendant and which were collectible and then in process of collection, aggregating in value over \$14,000, all pursuant to the terms of said agreement, and this defendant says that it would be grossly inequitable and unjust if it should be compelled to refund or pay back any of said monies to the Receiver, or anyone else, and that said payments were properly made to this defendant and that the sums of money so paid were received for a valuable consideration, paid by this defendant, and that if the proposed refund should be made, this defendant would have no way to recoup itself for the securities so surrendered.

This defendant further insists that the said Louis S. Shane should account to this Court for the proceeds of the operation by him of said Hotel Elisberg and that no final determination of this question can be had until such accounting takes place. It further insists that even should it appear that said payments made to this defendant were from the proceeds of the operation of said hotel, that this defendant held a mortgage upon said hotel and was so represented by said Receiver, and that the general creditors of

*Answer of the Lakewood Trust Company.*

said hotel company have no preference over the mortgage creditors therefor.

All these matters and things this defendant will aver, maintain and prove.

HALSTED H. WAINRIGHT,  
Solicitor for Lakewood Trust Co.

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

HALSTED H. WAINRIGHT, being duly sworn, according to law upon his oath deposes and says:

That he is the solicitor for the Lakewood Trust Company and is familiar with the matters and things set up in said answer and that the same are true in all respects as above set forth.

20

HALSTED H. WAINRIGHT.

Sworn and subscribed to before me  
this 15th day of September, 1924.

VIVIAN VAN HOUTEN,  
Notary Public of N. J.

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*Order of Continuance.*

**ORDER OF CONTINUANCE.**

Filed February 5, 1925.

IN CHANCERY OF NEW JERSEY.

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

WALLACH & BEHREND Co.,  
INC.,

*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

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*On Bill, etc.*

*Order of  
Continuance.*

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This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, upon the return of an order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and which said order to show cause was continued from time to time, it is, on this 28th day of January, 1925, on motion of Furst & Furst, solicitors as aforesaid,

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ORDERED, That the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, which was continued from time to time, be and the same is hereby con-

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*Order of Continuance.*

tinued until May 12, 1925, before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, New Jersey.

E. R. WALKER,  
C.

10 Respectfully advised,  
JOHN E. FOSTER,  
V.-C.

**ORDER OF CONTINUANCE.**

Filed July 14, 1925.

IN CHANCERY OF NEW JERSEY.

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 *Between*  
LAKEWOOD TRUST COMPANY,  
*Complainant,*  
*and*  
LAWSHANE COMPANY, INC.,  
*Defendant.* } *On Bill, etc.*  
*Order of*  
*Continuance.*

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 WALLACE & BEHREND Co.,  
INC.,  
*Complainant,*  
*and*  
LAWSHANE COMPANY, INC.,  
*Defendant.* }

40 This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., Inc., one of the complainants herein, upon the return of an order to show cause issued

*Order of Continuance.*

herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, and which said order to show cause was continued from time to time, and until May 12, 1925, it is, on this 14th day of July, 1925, on motion of Furst & Furst, solicitors as aforesaid,

ORDERED, That the order to show cause issued herein on August 15, 1924, directed to the Lakewood Trust Company and Louis S. Shane, returnable August 26, 1924, which was continued from time to time, be and the same is hereby continued until October 20, 1925, before the Chancellor, at the Chancery Chambers, Prudential Building, Newark, New Jersey.

E. R. WALKER,

C.

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Respectfully advised,

JOHN BENTLEY,  
V.-C.

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*Order of Reference.*

**ORDER OF REFERENCE.**

Filed August 25, 1925.

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAKWOOD TRUST COMPANY,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

*On Bill, etc.*

*Order of  
Reference.*

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WALLACE & BEHREND Co.,  
INC.,  
*Complainant,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendant.*

30 This matter being opened to the Court by Furst & Furst, solicitors for Wallach & Behrend Co., one of the complainants herein, it is thereupon, on this 25th day of August, 1925,

ORDERED, that the above-stated cause be referred to Hon. Alonzo Church, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

I consent to the making of the above order.

HALSTED H. WAINRIGHT,  
Solicitor for Lakewood Trust Co.

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*Designation.*

We consent to the making of the above order.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel  
with Sima Elisberg.

**DESIGNATION.**

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Filed September 20, 1925.

Filed September 21, 1925.

Signed by Vice-Chancellor Church, designating October 6, 1925, at Chancery Chambers, Newark, as time and place for the hearing of said cause.

Law Offices of  
FURST and FURST  
164 Market Street  
Newark, N. J.

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March 17, 1926.

James D. Carpenter, Esq.,  
75 Montgomery Street,  
Jersey City, N. J.

Re. Lawshane Company, Inc.

30

Dear Mr. Carpenter:

Pursuant to telephone conversation, we wish to advise you that we are willing to try the issues raised by the petition and the answers filed hereto by your clients, Louis S. Shane and the Lakewood Trust Company, before Vice-Chancellor Church, without the necessity on the part of your client turning over at this time the sum of money set out in the order heretofore made, provided, however, you appear generally

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*Designation.*

and waive your special appearance. We understand this is in accordance with your wish. Please confirm the arrangement. Of course, this letter is written without prejudice.

Very truly yours,

FURST & FURST.

10 GF/IG

Letter from McDermott, Enright & Carpenter.  
5839—

March 18, 1926.

Messrs. Furst & Furst,  
164 Market Street,  
Newark, N. J.

20 Gentlemen:

Re. Lawshane Company.

Your letter of March 17th is acknowledged.

We understand your proposition to be that if Mr. Shane will appear generally and try the issues raised by your petition and the answers thereto filed by Louis Shane and Lakewood Trust Company, you will not contend that Mr. Shane was bound by the order made to turn over ex-parte on your application a long while ago, but that the determination as to whether or not Mr. Shane is obliged to turn over any money and how much he is to turn over, if any, will be determined on the petition and answers on the hearing before the Vice-Chancellor. If this is your understand we will appear and try out this issue. If it is not your understanding, please advise us by return mail so that we may notify Mr. Shane of your determination on Sat-

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*Designation.*

urday. If you do not agree to this understanding we will not appear on Monday.

As we have notified you before, we have no objection whatsoever as to coming in and trying out these questions on the merits, but, of course, we will not agree to be found by an order that was made without our being heard thereon.

As our understanding, as herein expressed slightly differs from your understanding as contained in your of the 17th instant, we would like to have your reply not later than Saturday morning.

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Very truly yours,

McDERMOTT, ENRIGHT & CARPENTER,  
JDC-GCB.

Law Offices of  
FURST and FURST  
164 Market Street  
Newark, N. J.

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March 19, 1926.

James D. Carpenter, Jr., Esq.,  
75 Montgomery Street,  
Jersey City, N. J.

Re. Lawshane Company.

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Dear Mr. Carpenter:

We are in receipt of your letter of the 18th inst. Your understanding expressed therein in correct.

Very truly yours,

FURST & FURST.

GF/IG

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*Memorandum of Vice-Chancellor.*

**MEMORANDUM.**

Filed Sept. 23, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAKEWOOD TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAWSHANE COMPANY, INC., <i>et</i> <i>al.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill &amp;c.</i></p> <p><i>Memoran-</i></p> <p><i>dum.</i></p>
20	<p style="text-align: center;">WALLACH &amp; BEHREND Co., INC.,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAWSHANE COMPANY, INC., <i>Defendant.</i></p>	<p><i>On Bill &amp;c.</i></p>

Appearances:

McDermott, Enright & Carpenter, for appellant.

30 Halsted H. Wainwright, McCarter & English, Furst & Furst, for appellees.

CHURCH, V.-C.

A brief statement of the facts in connection with this matter is perhaps advisable. These facts are gained from a perusal of the file, and an examination of the papers, pleadings, conclusions and orders that were before Vice-Chancellor Foster, who, prior to his death, had charge

40 of this litigation.

*Memorandum of Vice-Chancellor.*

A bill was filed by the Lakewood Trust Company to foreclose a mortgage upon the premises, which consisted of an hotel and its furniture at Lakewood. Application was made for a receiver in this proceeding. About the same time a bill was filed by the Wallach & Behrend Co., Inc., the complainants second above-named, against one of the defendants in the first cause, asking for a receiver on the ground of insolvency. Both applications came on to be heard before Vice-Chancellor Foster at the same time. He directed a consolidation of the suits, and appointed John S. Applegate, Jr., receiver in both actions. The receiver, after taking possession of the hotel, found that it was in need of essential repairs, and under the Vice-Chancellor's direction, the hotel property—the subject of both suits—was directed to be sold, and an agreement was entered into on the 12th of December, 1923, between the interested parties, whereby one Louis S. Shane undertook to purchase the property under certain terms and conditions, one of which was that immediate possession of the hotel should be delivered to him. Following this, on the 12th of December, 1923, an order was made, to which said agreement was attached, relieving the receiver of any further current duties or obligations with reference to the hotel property, directing its surrender to Shane, and fixing the fees of the receiver. This order, among other things, provided:

“That the said Louis S. Shane agrees to purchase the aforesaid property for the sum of three hundred and seventy-five thousand dollars (\$375,000); ten thousand dollars (\$10,000) to be paid upon the execution of this agreement, the receipt whereof is hereby

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*Memorandum of Vice-Chancellor.*

acknowledged, and forty thousand dollars (\$40,000) on May 1, 1924, and the balance subject to two mortgages in sums aggregating not exceeding three hundred and twenty-five thousand dollars (\$325,000) now a lien against the said premises.

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“That Louis S. Shane is to take immediate possession of the aforesaid hotel and to operate the same and is to pay interest on the first and second mortgages from the date hereof until May 1, 1924; taxes to be apportioned from this date to May 1, 1924; and an apportionment of the insurance premium from this date to May 1, 1924, which insurance shall not exceed the sum of three hundred and twenty-five thousand dollars (\$325,000).

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“That in addition thereto the said Louis S. Shane shall pay the sum of ten thousand dollars to the Lakewood Trust Company which is to be used in payment of any and all indebtedness upon notes made, executed or endorsed by Mrs. Sima Elisberg, which said notes are now held by the Lakewood Trust Company and to be delivered upon payment of the aforesaid sum, payable \$5,000 on Feb 26, 1924, and \$5,000 on April 30, 1924.

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“That, upon the payment of the balance of forty thousand dollars (\$40,000) on May 1, 1924, there shall be delivered to Louis S. Shane a bargain and sale deed of the said premises in Lakewood, New Jersey, known as the Elisberg Hotel property, the description in said deed to conform to the description of the deeds conveying said premises to George W. Lawrence as trustee and The

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*Memorandum of Vice-Chancellor.*

Lawshane Company, Inc., if there be such deed of record; said deed or deeds of conveyance to be sufficient to convey a marketable title to said property, subject, however, to the two mortgages hereinabove mentioned and free from any and all other liens."

There having been a failure to perform certain 10  
obligations required by the agreement to be performed before the complete vesting of title, possession of the hotel, after its enjoyment for a season by Shane, was restored to the receiver pursuant to an order dated July , 1924, upon notice required by said order to be served on all parties interested, including said Shane, which said order further directed that the Lakewood Trust Company and Louis S. Shane account to the receiver for the operation of the hotel. An 20  
examination and audit of the books of Shane manifested that he had gained a profit of \$19,370.32 from the operation of this hotel, whereupon on the 31st of July, 1924, an order was entered directing Shane and the Lakewood Trust Company or any and all persons who had received said sum of \$19,370.32, or any part thereof, to pay the same to the receiver. Some question having arisen with reference to whether 30  
Shane had notice of this last mentioned order, on the 15th of August, 1924, upon petition of Wallach & Behrend Co., Inc., an order was made directing Shane and the Lakewood Trust Company to show cause on the 26th of August, 1924, why an order should not be made directing them to comply with the order made on July 31, 1924. After some delay and trouble, service of this order to show cause was made upon Shane, and later answers to the petition were filed, both by 40  
the Lakewood Trust Company and Shane. The

*Memorandum of Vice-Chancellor.*

answer of Shane set up several defenses, including a denial of the jurisdiction of the Court over him. On the 16th of September, 1924, an order was entered continuing the matter until December 5, 1924, and designating that day as the time for the hearing of the rule to show cause.

10 This order recites the appearance of Mr. Carpenter as solicitor for Shane. On the 28th of January, 1925, another order was entered continuing the matter to May 12, 1925, and by later order, it was further continued until October 20, 1925, and later again adjourned until the 24th of March, 1925, when an order was made from which an appeal is taken. This order recites the previous proceedings, the fact that Louis S. Shane appeared generally and waived the so-called special appearance of his counsel, which

20 in fact he did, and directs after hearing counsel "that Louis S. Shane be and he is hereby directed to pay to John S. Applegate, Jr., the receiver herein, the sum of \$19,370.32 within ten days from the date of this order, to be held by said receiver subject to the adjudication by this Court as to who is entitled thereto."

30 At the time of making this order, I was satisfied from an examination of the files that it was the intention of Vice-Chancellor Foster that Shane, who upon permission of the Court occupied and enjoyed the hotel premises for a season and apparently made a considerable profit for which he might be liable under this agreement to account, he having failed to carry out said agreement by the purchase of the property, should, for security's sake pay the moneys into

40 Court. The fact that Shane was a non-resident and was attempting to elude the jurisdiction of

*Memorandum of Vice-Chancellor.*

the Court, notwithstanding the condition upon which he had been by the Court's order given possession of the hotel and enjoyed the same and apparently gained a profit, was, in my opinion, a sufficient ground to have induced Vice-Chancellor Foster, as a precautionary measure to require Shane to pay the profits realized to the receiver until the rights and liabilities of the parties should have been finally determined. In the correctness of the apparent view of Vice-Chancellor Foster, I entirely concur, and hence made the order in question. Moreover as I said from the bench, if the money is not actually in Court there is no res to adjudicate about and no certainty that a Court order can be successfully enforced against a non-resident.

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## New Jersey Court of Errors and Appeals

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant-Appellee,*

*and*

LAWSHANE COMPANY, INC., *et*  
*al.,*  
*Defendants-Appellees,*

LOUIS S. SHANE,  
*Appellant.*

*On Bill, etc.*

WALLACH & BEHREND CO., INC.,  
*Complainant-Appellee,*

*and*

LAWSHANE COMPANY, INC.,  
*Defendants-Appellees,*

LOUIS S. SHANE,  
*Appellant.*

### BRIEF OF FURST & FURST FOR WALLACH & BEHREND, INC.

This matter comes before the Court on an appeal by Louis S. Shane from an order by the Chancellor, advised by Vice-Chancellor Church, directing him to pay to John E. Applegate, Jr., the receiver of Lawshane Company, Inc., the sum of \$19,370.32.

#### The Facts.

The Lakewood Trust Company instituted proceedings against Lawshane Company, Inc., to

foreclose a mortgage which it held affecting certain property owned by the said company in Lakewood, Ocean County, New Jersey. In said proceedings, the Court issued an order to show cause why a receiver should not be appointed.

On October 22, 1923, a proceedings was instituted by Wallach & Behrend, Inc., against the said Lawshane Company, Inc., for the appointment of a receiver under the New Jersey Corporation Act. On the same day the Court issued a rule to show cause why a receiver should not be appointed. Both of the said applications came on to be heard at the same time before Vice-Chancellor Foster.

On November 1, 1923, both of the said suits were consolidated, and an order was made appointing John S. Applegate, Jr., temporary receiver. At the same time, a rule to show cause was issued to the parties interested why the appointment should not be made permanent. On November 13, 1923, the Court made an order adjudicating the company insolvent, and appointed John S. Applegate, Jr., as permanent receiver with all statutory powers.

The Lawshane Company, Inc., owned and operated a hotel at Lakewood, New Jersey, known as the Elisberg Hotel. Its assets consisted of real estate, the hotel building and hotel equipment, such as furniture, draperies, linens, kitchen utensils, etc.

The receiver duly qualified, both as temporary and statutory receiver. He took possession of the hotel and found that it was in need of essential repairs. On December 3, 1925, the receiver filed a petition praying for an order directing all parties in interest to show cause why the property should not be sold, or why it should not be

rented, and why the receiver should not, pending a sale and disposition of the property, issue receiver's certificates to pay for necessary expenses and repairs.

On December 12, 1923, an agreement was entered into between Louis S. Shane, the Lawshane Company, Inc., and George W. Lawrence whereby the said Louis S. Shane undertook to purchase the property under the terms and conditions therein recited, one of which was that immediate possession of the hotel was to be delivered to him. Thereupon, on December 12, 1923, an order was made approving of the said agreement, and relieving the receiver of any further current duties and obligations with reference to the hotel property, and directing the surrender of the same to the said Louis S. Shane. The said Louis S. Shane then took possession of the hotel, and operated it during the seasons of 1923 and 1924.

At the close of the season, the agreement to purchase the hotel was not consummated, whereupon, on June 19, 1924, Furst & Furst, solicitors for certain creditors, served a notice upon Halsted H. Wainright, attorney for the Lakewood Trust Company; James D. Carpenter, attorney for Louis S. Shane, and Sima Elisberg and other parties interested in the proceedings, that they would apply to the Court on July 1, 1924, for an order:

- (1) directing the Lakewood Trust Company to pay to unsecured creditors the amount of their claims;
- (2) directing the receiver to take possession of the assets of the defendant company;
- (3) directing the Lakewood Trust Company and Louis S. Shane to account for the operation of the hotel from the date that the said Louis S.

Shane took possession. Service of a copy of the said notice was acknowledged by James D. Carpenter, Jr., and other parties interested in the proceedings.

On July 8, 1924, an order was entered directing the receiver to take possession, and that the Lakewood Trust Company and Louis S. Shane account to the receiver for the operation of the hotel. The order recited the proof of service of the notice, as indicated in the preceding paragraph.

The said Louis S. Shane complied with the order and voluntarily retained an accountant who made an audit. He furnished the receiver with a copy of the audit, which disclosed that he operated the hotel at a profit of \$19,370.32.

On July 31, 1924, an order was entered directing the said Louis S. Shane and the Lakewood Trust Company to pay the said profit to the receiver. Louis S. Shane, on August 1, 1924, was personally served with a copy of the order.

On August 6, 1924, Louis S. Shane, by McDermott, Enright & Carpenter, his solicitors, made application to set aside the said order of July 31, 1924.

On the fifteenth day of August, 1925, Furst & Furst, solicitors for Wallach & Behrend, Inc., filed a petition for an order directing the Lakewood Trust Company and Louis S. Shane to comply with the order made herein on July 31, 1924. Upon the filing of the said petition, an order was made directing Louis S. Shane and the Lakewood Trust Company to show cause on August 26, 1924, why an order should not be made directing them to comply with the order made on July 31, 1924. There was some delay

in making service of the said order to show cause and petition, during which time the said order to show cause was continued from time to time. Finally, after some delay and great trouble, service of the order to show cause of August 15, 1924, together with a copy of the petition, as well as a copy of an order continuing the same, was served personally upon Louis S. Shane on September 9, 1924. Thereafter, answers were filed to the said petition by the Lakewood Trust Company and Louis S. Shane.

On September 16, 1924, the Court designated December 5, 1924, at the Chancery Chambers, Long Branch, New Jersey, as the time and place for the hearing of the issues raised by the said petitions and answers. The said order recited the appearance of James D. Carpenter, of McDermott, Enright & Carpenter, solicitors for Louis S. Shane.

The said hearing was continued from time to time until May 12, 1925. Thereafter, Vice-Chancellor Foster died. The matter was then continued until October 20, 1925. On August 25, 1925, by consent, the matter was referred to Vice-Chancellor Church, who designated October 6, 1925, at Newark, as the time and place for the hearing. The matter was continued from time to time until March 24, 1926, when Vice-Chancellor Church made the order from which the appeal was taken.

On the day finally set for the hearing, McDermott, Enright & Carpenter appeared generally for Louis S. Shane, and the Court, thereupon, made an order directing Louis S. Shane to pay to the receiver herein the sum of \$19,370.32, to be held by the receiver subject to adjudication by the Court as to who is entitled thereto.

**POINT I.**

The order directing the appellant to pay to the receiver the sum of \$19,370.32 was entered after the appellant had voluntarily complied with the order of the Court to account.

Notice directed to Louis S. Shane and other parties interested that application would be made to the Chancellor on July 1, 1924, for an order directing the said Louis S. Shane to account, was served upon James D. Carpenter, Jr., attorney for Louis S. Shane. Service of a copy of the notice was acknowledged by Mr. Carpenter (State of Case, p. 46).

On July 8, 1924, the Court made an order which contained a recital of service of the notice, directing the said Louis S. Shane and the Lakewood Trust Company to account to the receiver for the operation of the hotel (Case, pp. 47 and 48).

Thereafter, Louis S. Shane obtained an accountant who made an audit. The accounting was presented to the receiver by Louis S. Shane in compliance with the said order of July 8, 1924. Upon the presentation of the accounting, the Court made an order directing Louis S. Shane and the Lakewood Trust Company to pay the sum of \$19,370.32, which appeared as the amount of the profits which were earned from the operation of the hotel during the season of 1923-4 (Case, pp. 50 and 51). Said order was duly served upon Louis S. Shane (Case, pp. 51 and 52).

It clearly appears that due notice of the application for an accounting was personally served upon the said Louis S. Shane. He complied with the order directing the accounting, retained an accountant and presented the audit to the re-

ceiver. His own accountant discloses a profit of \$19,370.32, which was his own admission of the amount of profit. The Court considered his figure of the amount of profit, as presented, correct. It is a clear case of admission.

## POINT II.

**The receiver is entitled to any profit that may have been made from the operation of the hotel.**

The Lakewood Trust Company is the holder of a real estate and chattel mortgage which purported to affect the assets of the Lawshane Company, Inc. George W. Lawrence, who was an official of the Lakewood Trust Company, was a party to an agreement made with Sima Elisberg, mother-in-law of the appellant, relative to the operation of the said hotel. Louis S. Shane desired to operate the hotel for the season of 1923-4, and to purchase the said hotel. These respective parties entered into an agreement on December 12, 1923, which appears on pages 36, 38, 39 and 40 of the State of Case. This agreement provided, among other things, that the said Louis S. Shane was to take immediate possession of the hotel and operate the same. It clearly contemplated an immediate surrender of the hotel by the receiver. In accordance with the intention of the parties, on the very same day, on application of the attorney for the Lakewood Trust Company, an order was made, which provided, among other things, as follows:

“that possession of the Elisberg Hotel be forthwith, by said receiver, surrendered to Louis Shane, and that thereafter the said receiver be and he is hereby relieved from all further duties or responsibilities in connection with the said hotel and its contents, and that such possession is so to be transferred to said Louis Shane with the under-

standing that the said agreement hereinabove referred to will in all respects be carried out and performed" (Case, pp. 41 and 42).

Pursuant to the said order the receiver surrendered possession to Louis S. Shane. He operated the hotel during the season of 1923 and 1924. Possession of the hotel was transferred to the said Louis S. Shane with the understanding that the agreement would in all respects be carried out and performed.

The agreement, however, was not carried out. Thereupon, the Court entered an order at the end of the season directing John S. Applegate to take possession of the hotel (Case, pp. 47 and 48).

The said Louis S. Shane bargained for the immediate possession of the hotel. His requirements were met by the Court's order, and the surrender of possession by the receiver. He used, in connection with the operation of the hotel, property of the receiver. The profits derived from the operation of the hotel belong to the receiver as a representative of stockholders and creditors. Shane took possession with the understanding that the agreement would in all respects be carried out and performed. If the agreement was not carried out, it was no fault of the receiver.

It was not necessary for the agreement to provide for the payment of any profits to the Lawshane Company, Inc., or to the receiver. The Court was justified in making the order directing the turnover of the profits in view of the fact that Shane used the property of the estate in connection with the operation of the hotel.

### POINT III.

The orders of July 31, 1924, and March 24, 1926, were valid.

The order of July 31, 1924, was made with due notice to the solicitor for Louis S. Shane. On June 19, 1924, Mr. James D. Carpenter, Jr., solicitor for Louis S. Shane, acknowledged service of a notice, returnable July 1, 1924, that application would be made for an order directing Louis S. Shane to account.

On July 8, 1924, the Court entered an order directing an accounting. Mr. Shane complied with the order and presented his accounting to the receiver. The Court considered the accounting, so submitted, as correct, and entered the order of July 31, 1924. This order was duly served upon Mr. Shane (Case, p. 51). Thereafter, application was made to vacate it, and Shane appeared specially, and refused to appear generally, contending that the Court had no right to enter the order of July 31, 1924.

It was clearly the intention of the Court to require Shane to turn over the profits realized to the receiver before the rights of the respective parties would be finally determined. A great deal of difficulty was experienced in making service of the orders in question. The Court was entirely justified in directing that the *res* be turned over to the receiver.

Louis S. Shane obtained permission of the Court to occupy, operate and enjoy the hotel. He made a profit, for which he is liable under the agreement to account. He failed to carry out the agreement to purchase the property. The Court is justified in directing that the profit be first turned over before the rights and liabilities of the parties would be finally determined.

**Conclusion.**

We respectfully submit that the order appealed from should be affirmed.

FURST & FURST,  
Solicitors for Wallach & Behrend.

GEORGE FURST,  
Of Counsel.

## New Jersey Court of Errors and Appeals

*Between*

LAKWOOD TRUST COMPANY,  
*Complainant-Appellee,*

*and*

LAWSHANE COMPANY, INC., *et*  
*al.,*

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LOUIS S. SHANE,

*Appellant.*

*On Appeal  
from  
Chancery.*

WALLACH & BEHREND CO.,  
INC.,

*Complainant-Appellee,*

*and*

LAWSHANE COMPANY, INC.,

*Defendant-Appellee.*

### **BRIEF of McDERMOTT, ENRIGHT & CARPENTER, for LOUIS S. SHANE, Appellant.**

Louis S. Shane, a resident and citizen of the States of New York, appeals from an order of the Chancellor, advised by Vice-Chancellor Church and dated March 24, 1926. The order directed Mr. Shane to pay to John S. Applegate, Jr., Receiver of Lawshane Company, Inc., a New Jersey corporation, \$19,370.32, within ten days from the date of the order (record, pp. 6 and 7).

Mr. Shane was not a party to either of the above entitled causes. No evidence whatsoever was taken in the Court below, on which the order appealed from could have been based,

and although Mr. Shane requested it he was denied an opportunity to prove that he owed nothing to the Receiver.

### STATEMENT OF THE FACTS.

In 1923 the Lakewood Trust Company filed a bill to foreclose a third mortgage on property in Lakewood, known as the Elisberg Hotel. This mortgage was subject to a first mortgage held by the New Jersey Title Guarantee & Trust Company, and to a second mortgage held by one Barth, which was thereafter assigned to one Nelson.

After the commencement of this foreclosure suit certain creditors of the Lawshane Company, Inc. (which held title to the hotel property) filed a bill for a statutory Receiver of Lawshane Company, Inc., on the ground of insolvency. The matter came on before Vice-Chancellor Foster, who appointed Mr. John S. Applegate, Jr., as Receiver, November 13, 1923 (p. 20), and who made an order consolidating both actions. The Receiver after taking possession of the hotel found that it was in need of essential repairs, and that a conservative estimate of the necessary repairs was \$10,000. (See Special Master's Report as to the condition of the hotel, pp. 9-12.) After the filing of this report as to the condition of the hotel, the Receiver filed a petition praying for leave to issue Receiver's certificates to put the property in repair, and for leave to negotiate a lease of the property for the Lakewood season 1923-1924 (petition, p. 13).

On November 23, 1923, Mr. Applegate filed another petition praying that a rule to show cause issue to all parties in interest, requiring

them to show cause why the property should not be sold at public or private sale, why he should not rent the property and why he should not be authorized, pending a sale, to make repairs and issue Receiver's certificates (p. 22).

The Receiver reported to the Court on November 23, 1923, two offers of lease for the property, one for \$25,000, the tenant making the repairs, and the other \$35,000, the Receiver making the repairs. Vice-Chancellor Foster thereupon made an order directing the Receiver to receive bids on or before Monday, November 26, 1923.

A further petition was filed by the Receiver on December 3, 1923, among other things praying for a rule to show cause directing all persons in interest to show cause why the property should not be sold to the highest bidder, or why it should not be rented, and why the Receiver should not, pending a sale, issue Receiver's certificates to pay a caretaker \$125 a month, to pay the cost of insurance premiums incurred since the Receiver was appointed, other necessary expenses and repairs not to exceed \$13,000 (p. 30).

On December 12, 1923, an agreement for the sale of the property was negotiated between the appellant, Louis S. Shane, Lawshane Company, Inc., George W. Lawrence, who had an interest in the property as Trustee for Sima Elisberg, who built the hotel, and the Lakewood Trust Company as holder of said mortgage. (See agreement, p. 36.)

The same day this agreement was executed it was presented to Vice-Chancellor Foster by

Mr. McCarter, of counsel with the Lakewood Trust Company, who made an order:

“that possession of the Elisberg Hotel be forthwith, by said Receiver, delivered to Louis Shane, and that thereafter the said Receiver be and he is hereby relieved from all further duties or responsibilities in connection with the said hotel and its contents, and that such possession is so to be transferred to said Louis Shane with the understanding that the said agreement hereinabove referred to will in all respects be carried out and performed” (pp. 41-42).

The agreement thus approved provided that Shane pay \$10,000 forthwith to the Lakewood Trust Company, \$40,000 additional on May 1, 1924, and the balance of \$325,000 by assuming the first and second mortgages. It was also agreed that Shane should take immediate possession of the hotel, operate it and pay the taxes and insurance between December 12, 1923, and May 1, 1924. In addition Shane agreed to pay \$10,000 to the Lakewood Trust Company to be used in payment of notes executed or endorsed by Sima Elisberg held by the Lakewood Trust Company, payable \$5,000 February 26, 1924, and \$5,000 April 30, 1924. The agreement further provided:

“that in the event that L. Barth & Son, or the assignee of the mortgage executed to L. Barth & Son, refuses to accept \$25,000 out of the \$50,000 purchase price herein mentioned and discontinue his foreclosure suit of his said mortgage, in part payment of the second mortgage and to issue to the Lakewood Trust Company a participating certificate to the extent of \$25,000 in said second mortgage, on or before May 1, 1924, this contract shall be at an end and the Lakewood Trust Company shall return to Louis S. Shane the said sum of \$10,000 hereinabove first mentioned, the title to all

chattels said Shane may bring to the hotel shall remain undetermined and unaffected by their return to the hotel.

Said Louis S. Shane further agrees to give to the Lakewood Trust Company one-half of any and all profits arising out of the operation of said hotel from date to May 1, 1924, inclusive, provided title shall not pass as aforesaid.

Any valid unsecured indebtedness now existing against the Lawshane Co., Inc., and, if necessary, established in a legal way that shall be proven before the Receiver within the time limited by law shall be paid by the Lakewood Trust Company'' (pp. 39-40).

The order approving this agreement fixed the fees of the Receiver and counsel and ordered them paid (by the Lakewood Trust Company).

Mr. Shane, after the execution of this agreement and its approval, took possession of the hotel, made the necessary repairs and operated the hotel during the season 1923-1924 at Lakewood.

L. Barth & Son refused to accept \$25,000 of said purchase price, and discontinue the suit it had brought to foreclose its mortgage. Shane, pursuant to the provisions of the said agreement, considered the contract at an end and refused to take title on May 1, 1924.

The preceding Fall the Receiver had not been able to consummate a lease or sale of the property to anyone except Mr. Shane because of a controversy between the Lakewood Trust Company and Sima Elisberg. Mrs. Elisberg had an agreement in writing with George W. Lawrence, as trustee, who was an officer of the Lakewood Trust Company, under the terms of which it was provided that Mrs. Elisberg should operate this hotel in a certain manner. She also owned and

operated the Lorraine Hotel at Edgemere, Long Island. Mrs. Elisberg owed the Lakewood Trust Company large sums of money, secured by customers' paper and also by mortgages on these hotels. The Lorraine Hotel was operated during the summer and the Elisberg Hotel at Lakewood during the winter. The silverware and other chattels were used in both hotels, and at the time these suits were started the silverware, linens, &c., were in the Lorraine Hotel, and Mrs. Elisberg, claiming to own these chattels, refused to bring them into the State. She also filed a petition in this Court praying that the possession of the Hotel Elisberg should be given to her under said agreement with Lawrence, trustee, and claimed that the conveyance from Lawrence, trustee, to the Lawshane Company, Inc. (a subsidiary corporation formed by the Lakewood Trust Company) was in violation of said agreement, and that she had the sole right to operate this hotel.

Because the silverware, linens, &c., were not in the Hotel Elisberg the Receiver was unable to rent the hotel to advantage for the 1923-1924 season. Mr. Shane was a son-in-law of Mrs. Elisberg, and he decided to buy this hotel as a personal venture, and before signing the agreement above referred to had obtained an agreement from Mrs. Elisberg to return the said chattels to the hotel and employ her as an assistant in the operation of the hotel, provided he was able to purchase it.

Mr. Carpenter had appeared in the proceedings as solicitor for Sima Elisberg and in no other capacity prior to the 1st of August, 1924.

On July 1, 1924, Messrs. Furst & Furst, solicitors for certain creditors, served upon several

of the parties herein a notice that he would apply to the Chancellor on July 19th for an order (1) directing the Lakewood Trust Company to pay the unsecured creditors the amount of their claims; (2) for an order directing the Receiver to take possession of the assets of the defendant Company, and (3) for an order directing the Trust Company and Shane to account for the operation of the hotel from the date Shane took possession. (See notice, pp. 44, 45, 46.)

On July 8, 1924, Vice-Chancellor Foster advised an order directing the Receiver to take possession of all the assets of Lawshane Company, Inc.:

“And it is further Ordered that the Lakewood Trust Company and Louis S. Shane account to the said Receiver, John S. Applegate, for the operation of the hotel owned by the defendant company at Lakewood, New Jersey, from the date the said Louis S. Shane took possession pursuant to agreement made by and between the Lakewood Trust Company, George W. Lawrence, the Lawshane Company, Inc., and Louis S. Shane” (pp. 47-48).

This order did not recite the appearance of Mr. Shane and was not made on the date for which the notice had been given.

On July 30, 1924, there was filed a notice (p. 49) from Furst & Furst, addressed to Mr. Wainright as solicitor for the Lakewood Trust Company, of an application to the Chancellor on July 31st, for an order directing the Lakewood Trust Company and Shane to pay to Mr. Applegate, as Receiver, the profits as set up in an accountant's report of an examination of the books of the Elisberg Hotel for the 1923-1924 season, made for the benefit of Shane and the Lakewood Trust Company. A copy of this ac-

countant's report was mailed to the Receiver for his inspection.

On July 31, 1924, Vice-Chancellor Foster advised an order, on motion of Furst & Furst (which recites no appearance and no service of notice on Mr. Shane), which orders:

"That Louis S. Shane and the Lakewood Trust Company, their attorneys, agents or employees, and any and all persons who have received said sum of \$19,370.32, or any part thereof, be and they are hereby directed to pay to John S. Applegate, the Receiver herein, any and all sums of money received by them from the operation of the said hotel, during the season of 1923 and 1924 within ten days from the date of the service of a true copy of this order" (pp. 50-51).

A copy of this order was served on Mr. Shane on August 1, 1924 (affidavit bottom p. 51).

On August 6, 1924, McDermott, Enright & Carpenter, solicitors specially appearing for Louis S. Shane to set aside said order of July 31st, and for no other purpose, served on the Receiver, Messrs. Furst & Furst, solicitors for creditors, and Mr. Wainright, solicitor for the Lakewood Trust Company, a notice of an application before the Chancellor, at Trenton, to set aside the order of July 31, 1924, so far as it applied to the petitioner, Louis S. Shane, for the reasons set forth in a petition annexed thereto. (Notice, p. 53.) In the petition Shane alleged (a) that the Court did not have jurisdiction over him for the purpose of making the order; (b) that under the terms of the agreement Shane's share of the profits of the operation of the hotel were not payable to Lawshane Company, Inc., or to the Receiver, or to any other person or persons, and that one-half of his share

of the profits was paid to Sima Elisberg under a separate agreement with her, under the terms of which she returned the chattels which she had in New York to the Elisberg Hotel so that he could operate the hotel during the season of 1923-1924, and that had it not been for said agreement he would not have made the agreement in question in this suit; (c) on the ground that Shane did not have or receive notice of the application to the Court for the order of July 31, 1924, and that not being a party to the cause and not being served with process, the order was violative of the Federal Constitution, in that it deprived him of his property without due process of law. The petition had annexed to it affidavits and exhibits showing that Shane had no notice of the application for the said order (petition, pp. 55 to 79 inclusive).

On August 12, 1924, the matters raised by Mr. Shane's petition was ordered continued and on August 15th, Messrs. Furst & Furst filed a petition praying that an order might be made directing the Lakewood Trust Company and Mr. Shane to comply with the order of July 31, 1924 (pp. 80 to 82 inclusive).

On August 15th, Vice-Chancellor Foster advised an order reciting the special appearance of Mr. Shane, and ordering that Shane and the Lakewood Trust Company show cause before the Chancellor August 26th, why an order should not be made directing Shane and the Trust Company to comply with the order of July 31st, and ordered that service of a true copy of the said order be served upon Shane and his solicitors and on the Trust Company within five days (pp. 83 and 84).

On August 12th, after hearing the said application raised by the petition of Mr. Shane, Vice-Chancellor Foster signed an order which recited that:

“the Court deciding that the matters set forth in the said petition should be continued to a later date, and be considered together with an application which the Court directs the Receiver to make for an order compelling the Lakewood Trust Company and Louis S. Shane to pay over certain moneys claimed by said Receiver:

It is thereupon on this 12th day of August, 1924,

Ordered, that the application of McDermott, Enright & Carpenter, solicitors appearing specially for Louis S. Shane, to set aside an order of this Court made July 31, 1924, and for no other purpose, and all matters thereon, be continued to and until September 2, 1924.”

It was further ordered that the Receiver, or the solicitors for certain creditors, prepare a petition for their application and effect legal service upon the Trust Company and Shane (pp. 88-89).

This matter came on again on September 2, 1924, when another order was advised by Vice-Chancellor Foster, continuing the matter until September 16, 1924, and directing that Shane show cause that day why an order should not be made directing him to account to the Receiver for the operation of the hotel, and ordering that Shane pay to Mr. Applegate any and all sums of money received by him from the operation of the hotel under said agreement within ten days, and ordering that a copy be served upon Shane within ten days thereafter (pp. 92, 93, 94).

The order to show cause issued on August 15th, together with a copy of the petition on which

it was made, as well as a copy of another order issued on September 2, 1924, was served on Mr. Shane personally on September 9, 1924. (See affidavit of service, p. 95.)

Mr. Shane after being served on September 9th, filed an answer to the petition of Furst & Furst, which prayed that he be directed to account to and pay over to the Receiver the moneys received from the operation of the hotel. (See answer, pp. 99 to 105.) The Lakewood Trust Company likewise filed an answer to the said petition (pp. 106-108). Mr. Shane in his answer alleged that the Court did not have jurisdiction over him for the purpose (a) of compelling him to account to Mr. Applegate as Receiver, or (b) for the purpose of compelling him to pay over to Mr. Applegate any sum or sums of money, and that if the Receiver desires to commence an action for such accounting, he prays that an appropriate original action may be started at law or in equity, so that he may defend the same.

By way of second defense Mr. Shane alleged that the petition of Furst & Furst set forth no cause of action against him and showed no obligation on him to pay Wallach & Behrend or the Receiver, or any other person any money or any of the profits that were realized from the operation of the Elisberg Hotel during the season 1923-1924.

By way of a third defense he alleged that the Receiver had nothing to do with the operation of the said hotel and should not have or be entitled to receive any of the profits.

By way of fourth defense he alleged the matters set forth in his petition for leave to appear specially to attack the legality of the order made July 31, 1924, and to set aside the same as ap-

plying to him, and praying that it might be incorporated in his answer by reference, without the necessity of copying the same at length in the answer, and that he might have the benefit of all the allegations and all the exhibits attached thereto. He also alleged that prior to the making of the agreement of December 12, 1923, Shane had no interest whatsoever in said hotel; that prior thereto he was in the business of manufacturing and selling dresses in New York, and only entered into the agreement because he saw an opportunity to operate the hotel at a profit and to purchase the hotel advantageously; that the only reason he did not take title to the said hotel under the terms of said agreement was because the second mortgagee, L. Barth & Son, refused to discontinue its suit to foreclose a mortgage amounting to over \$200,000, the foreclosure suit having proceeded and the property having been sold in said suit during the month of August, 1924. He prayed that the Court might refuse to entertain any jurisdiction over him and might order the petition dismissed (answer, pp. 99 to 105).

On September 16, 1924, the matter came on to be heard and the answer of Mr. Shane to the said petition, and the answer of the Lakewood Trust Company were filed, and after all parties were heard Vice-Chancellor Foster advised an order as follows:

“That December 5, 1924, at 10:30 o'clock in the forenoon, at the Chancery Chambers, Long Branch, New Jersey, is hereby designated as the time and place for the hearing of the issues raised by the said petition upon which the order to show cause was issued on August 15, 1924, and the answers of the Lakewood Trust Company and Louis S. Shane thereto; and it is further

Ordered, that the order to show cause issued on August 15, 1924, directed to the said Lakewood Trust Company and Louis S. Shane, and continued from time to time, be and the same is hereby continued to December 5, 1924, and until the determination of the issue hereinbefore referred to" (pp. 96-97).

For some reason the matter was not heard at Long Branch on December 5th, and was continued by an order dated December 15th to January 8, 1925 (p. 98).

On January 28, 1925, an order was made continuing the matter until May 12, 1925 (p. 109). Thereafter Vice-Chancellor Foster died.

On July 14, 1925, Vice-Chancellor Bentley, on motion of Messrs. Furst & Furst, directed the matters to be continued until October 20, 1925, at the Chancery Chambers in Newark (pp. 110-111).

On August 25, 1925, this matter was referred to Vice-Chancellor Church (p. 112). Vice-Chancellor Church by designation made September 20, 1925, designated October 6, 1925, at Newark, as the time and place for the hearing (p. 113). The matter was informally continued from time to time thereafter, until March 24, 1926, when Vice-Chancellor Church made the order from which this appeal is taken (pp. 6, 7, 8).

Before this hearing there had been an informal hearing before Vice-Chancellor Church when Mr. Furst contended before the Vice-Chancellor that the \$19,370.32 should be paid into Court by Mr. Shane before any hearing should be held.

After this informal hearing, counsel held a conference and as a result thereof certain letters passed between the solicitors for Mr. Shane and

Furst & Furst, solicitors for the Receiver and creditors, and it was agreed between them that the question raised by the petition and answers thereto filed by Mr. Shane and the Lakewood Trust Company should be tried out before the Vice-Chancellor. These issues were whether Shane was under a duty to account, and if so, how much he should pay over.

When the matter came on before Vice-Chancellor Church on March 24th the letters from Furst & Furst to Mr. Carpenter of March 17, 1926, and March 19, 1926, and Mr. Carpenter's letter to Furst & Furst of March 18, 1926, were presented to Vice-Chancellor Church (record, pp. 113-115). The Vice-Chancellor then without any hearing whatsoever, and without taking a word of testimony made the order appealed from, adjudging that there was a profit of \$19,370.32 from the operation of the hotel and directing that Shane pay over to the Receiver that amount of money within ten days from the date of the order.

Vice-Chancellor Church in his memorandum, as a justification for the order appealed from says:

“At the time of making this order, I was satisfied from an examination of the files that it was the intention of Vice-Chancellor Foster that Shane, who upon permission of the Court occupied and enjoyed the hotel premises for a season and apparently made a considerable profit for which he might be liable under this agreement to account, he having failed to carry out said agreement by the purchase of the property, should for security's sake pay the moneys into court” (p. 120).

Another reason urged in his opinion by the Vice-Chancellor to support the order is this:

“Moreover as I said from the bench, if the money is not actually in Court there is no *res* to adjudicate about and no certainty that a Court order can be successfully enforced against a non-resident” (p. 121).

### GROUND OF APPEAL.

The appellant urges that the order appealed from should be reversed for the following reasons:

(1) Because it adjudges and decrees that appellant pay to Mr. Applegate, as Receiver, the sum of \$19,370.32, within ten days from the date of the order.

(2) In that said order or decree attempts to adjudge that there were \$19,370.32 profits produced from the operation of the Elisberg Hotel at Lakewood, while being operated under the agreement dated December 12, 1923, whereas no hearing was ever held for the purpose of determining what were the net profits from the operation of said hotel, and said figure was merely obtained from a copy of an auditor's report of an examination of the books of the appellant, and the appellant was denied an opportunity to prove what the net earnings of the said hotel were and what was done with same.

(3) Because neither the said Receiver nor anyone else has any lawful right to any of the profits from the operation of the said hotel under the agreement made December 12, 1923, and the Court was without jurisdiction to order the appellant to pay any of the profits which may have been made by him in the operation of the hotel under the agreement of December 12, 1923, to the said Receiver or to any other person.

(4) Because the appellant, Louis S. Shane, was not a party to either of the said causes, was not served with process in either of said causes, despite which facts the Court below attempted to exercise jurisdiction over the appellant and made the order appealed from without according to the appellant a hearing on the merits, thereby depriving the appellant of property without due process of law, contrary to the provisions of the Fourteenth Amendment of the Federal Constitution.

(5) Because the Court below did not have jurisdiction over said Shane for the purpose lawfully of making the order or decree of March 24, 1926.

All of said reasons are relied upon.

#### POINT I.

No hearing ever having been held to determine what were the profits from the operation of the hotel during the season 1923-1924, the order directing the appellant to pay the Receiver \$19,370.32, was erroneous.

The record does not disclose how the figure of \$19,370.32 ever got into the order of July 31, 1924, because that is the first place where this figure appears (p. 50). That order simply says: "and it appearing that the operation of said hotel by the said Louis S. Shane produced a profit of \$19,370.32."

The original files in the office of the Clerk in Chancery show nothing as a basis for the making of this order.

Did some solicitor tell the Court that there was a profit of that amount? The record is silent.

Mr. Shane was not present when that order was made and notice of an application for that order had never been served on him.

As a matter of fact an accountant had gone over the books and his report to Mr. Shane showed that was the gross profit from the operation of the hotel for that season. The report of the accountant was not verified. The accountant was not called as a witness, and furthermore the report of the accountant was never even filed with the Court. This account was made for the benefit of the Lakewood Trust Company and Shane for the adjustment between them of their rights under the agreement. It did not and did not purport to show what moneys Shane paid out for the silverware and linens used in the hotel, or to Mrs. Elisberg as an inducement to her to assist in the management of the hotel.

The Court having made on an *ex parte* application the order of July 31, 1924, directing that amount to be paid, and Shane thereafter having in his petition and answer requested an opportunity to have determined the amount of profits for the season, is in the position of having an arbitrary figure assessed against him on somebody's hearsay statement. Whose it was nobody knows. The record does not disclose.

We respectfully submit that the orderly processes of justice requires a hearing before there can be an adjudication that a certain sum of money must be paid by one party to another. One man cannot sue another in a small cause court and recover judgment without proof of what is due him, at least, by affidavit. The order complained of has absolutely nothing to support it, not even a scrap of paper.

**POINT II.**

Neither the Lawshane Company, Inc., nor the Receiver is entitled to any profit that may have been made from the operation of the hotel under the agreement of December 12, 1923.

It would seem that if the Receiver or the Lawshane Company, Inc., is entitled to any of the profits made in the operation of the hotel under said agreement, that fact would appear in the agreement itself. The agreement was for the sale of the hotel at a certain price and under certain conditions. The price was satisfactory to the Lakewood Trust Company and to Shane. Shane paid \$10,000 of his own money at the time of the signing of the agreement. He agreed to pay certain additional moneys the first of the following May. He also assumed to pay the taxes and insurance, and to pay \$10,000 additional to the Lakewood Trust Company in February and April, 1924. In addition thereto he was obliged to spend large sums of money to make certain repairs to the hotel, in order to have it fit for occupancy, as shown in the report of Mr. Applegate as Special Master made November 2, 1923. The reason that the agreement did not provide for the payment of any moneys to the Receiver was because the Lakewood Trust Company agreed to pay the Receiver's fee and expenses, and also all the valid unsecured indebtedness existing against the Lawshane Company, Inc. The order advised by Vice-Chancellor Foster expressly approved this agreement, and ordered that possession of the hotel be surrendered to Mr. Shane forthwith for operation under the terms of that agreement, directed the Receiver to surrender possession to him, and allowed the Receiver and counsel generous fees, which

were thereafter paid by the Lakewood Trust Company.

The agreement provides that Mr. Shane agreed to give the Lakewood Trust Company one-half of any and all profits arising out of the operation of the hotel from date to May 1, 1924, provided title shall not pass. In the absence of any provision in either the agreement or the order for the payment of any of the profits to the Receiver, it does not seem that the Court had any right to direct Shane to pay all of the profits to the Receiver simply because title did not pass. It was not because of any failure or omission on the part of Shane that title did not pass. It was simply because the second mortgagee refused to discontinue its suit to foreclose its mortgage for \$200,000 that the sale fell through.

The hotel was sold at Sheriff's sale through the foreclosure of the Barth mortgage in August, 1924. The agreement which was approved by the Court considered this contingency, and provided that in the event that Barth would not discontinue his foreclosure suit and accept a participation in the consideration to be paid by Shane, the agreement would be at an end.

On what theory is the Receiver entitled to any profit from the operation of the hotel under this agreement?

Because Barth would not discontinue his foreclosure suit? The agreement provided for that. Because some better terms might possibly have been arranged under a different agreement, or through an immediate public sale? This is no reason for taking away from Shane the profits he made under an agreement that was approved by the Court. Because the agreement was possibly a poor agreement from the standpoint of

the Receiver? That is no reason for treating the agreement as a nullity and Shane as a trespasser. If Shane had lost money instead of making money would he have had the right to look to the Receiver for reimbursement? Hardly.

Shane performed said agreement on his part in every particular and is not in default in any particular. The only complaint any one can make is because the creditors of Lawshane Company, Inc., were not paid. But Shane did not agree to pay them.

We therefore respectfully submit that since the agreement does not provide for the payment of any of the profits to the Lawshane Company, Inc., or to the Receiver, the order directing the payment of \$19,370.32 to the Receiver was erroneous, and should be reversed.

### POINT III.

The order of July 31, 1924, was invalid and consequently the order of March 24, 1926, attempting to enforce it, was invalid.

The order of July 31, 1924, advised by Vice-Chancellor Foster, was made on the application of Furst & Furst, solicitors of one of the creditors, without any previous notice to Mr. Shane. This order (p. 50) recites:

“and it appearing that the operation of the said hotel by the said Louis S. Shane produced a profit of \$19,370.32, and it appearing that an order was made by the Court herein directing the said Lakewood Trust Company and the said Louis S. Shane to account to the Receiver herein for the operation of the hotel, and after hearing George Furst, of Furst & Furst, in support of said motion, and Halsted H. Wainright, in opposition thereof, it is, on this 31st day of

July, 1924, on motion of Furst & Furst, attorneys aforesaid, Ordered, &c.”

The record does not show how it appeared to the Court that the operation of the hotel by Shane produced a profit of \$19,370.32. Presumably Mr. Furst told the Court that it did. Mr. Wainright may have told the Court that it did. That does not constitute legal proof. The record shows that the only person who had notice of the application for this order was Mr. Wainright (notice, p. 49). After this order had been served on Mr. Shane on August 1st (affidavit, p. 51), he forthwith applied to the Court to set aside the order and appeared specially for that purpose (p. 53), and filed a petition showing in what respects that order was invalid, and thereupon Vice-Chancellor Foster directed Furst & Furst to raise the question by a petition and bring Mr. Shane into Court in the regular way by the service of an order to show cause or notice. He was brought in by the proper service of a rule to show cause, filed his answer to the petition denying that he should account and denying that he made \$19,370.32 profit, and denying the right of the Court to make the order of July 31, 1924. Thereupon Vice-Chancellor Foster continued the issue raised in the petition and the answers of Shane and the Lakewood Trust Company until after he died. Many of the continuations were informal, and the record does show formal continuations by order from time to time. When the matter came on before Vice-Chancellor Church he refused to hear the matter on the issue presented to Vice-Chancellor Foster and determined that the order of July 31, 1924, must be obeyed, without a hearing, and that Shane was required to pay over the money and then try to get it back.

The Vice-Chancellor in his opinion criticises Shane a non-resident and says that he was "at-tempting to elude the jurisdiction of the Court, notwithstanding the condition upon which he had been by the Court's order given possession of the hotel and enjoyed the same and apparently gained a profit." The learned Vice-Chancellor says that this was in his opinion a sufficient ground to have induced Vice-Chancellor Foster, as a precautionary measure to require Shane to pay the profits realized to the Receiver until the rights and liabilities of the parties should have been finally determined. The Vice-Chancellor adds:

"Moreover as I said from the bench, if the money is not actually in Court there is no *res* to adjudicate about and no certainty that a court order can be successfully enforced against a non-resident" (Record, p. 121).

We submit that these are not sufficient reasons to justify this order. Shane has not attempted to evade the jurisdiction of the Court, except so far as is necessary to set aside the order of July 31, 1924, which was made without any notice whatsoever to him, and in so doing he is merely preserving his rights. He did no more than come into Court and ask that Court to set aside an order which it had improvidently made, because we do not believe that Vice-Chancellor Foster would have made this order had he not supposed that notice of an application for it had been given Mr. Shane.

The suggestion that the Court should have a *res* to adjudicate about, is in theory very nice. It is out of a *res* that allowances are made, sometimes generously. The rights of Shane to this same *res* should also be given some consideration, and it would seem that before he is

required to deposit the *res* in court he should be given an opportunity to be heard on whether that *res* is his or the Receiver's. The mere fact that the Receiver wants a *res*, standing alone, is no reason for giving it to him, at the expense of somebody else who is entitled to it, and who, per chance, lives on the other side of the Hudson River a part of the year.

We respectfully submit therefore that the order of July 31, 1924, was illegal as to Mr. Shane and should be set aside, and we think Vice-Chancellor Foster would have set it aside after a hearing. The order of July 31, 1924, was illegal for the further reason because it was made without notice, and is hence in violation of the due process clause of the Fourteenth Amendment.

*Pennoyer v. Neff*, 95 U. S. 714; 24 L. Ed. 565.

We submit that if the order appealed from was made to enforce the order of July 31, 1924, without a hearing on the issue raised by the petition and answers of Mr. Shane and the Lakewood Trust Company, then the order appealed from was erroneously made and should be reversed.

#### CONCLUSION.

We respectfully submit that on no sound theory can the order appealed from be supported, and that it should therefore be reversed.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel with Appellant.

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Cause No. 73

**NEW JERSEY COURT OF ERRORS AND APPEALS**

**OCTOBER TERM 1926**

Lakewood Trust Company  
Complainant  
Appellee

and

54-763

Lawshane Company, Inc.  
et al. Defendants  
Appellees

Louis S. Shane  
Appellant

on appeal

from

**COURT OF  
CHANCERY**

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Wallach and Behrend Co. Inc.  
Complainant  
Appellee

and

Lawshane Company, Inc.  
Defendant  
Appellee

54-518

Louis S. Shane  
Appellant

Memorandum of Robert H. McCarter and Halsted H. Wainright for Lakewood Trust Company, Appellee.

The State of case shows that this appeal is taken from an order set forth on page 6 et seq.

Attention is called to the mandatory part of the order which is in these words, viz:

**“Ordered, That Louis S. Shane be and he is hereby directed to pay to John S. Applegate, Jr., the receiver herein the sum of \$19,370.32 within ten days from the date of this order to be held by said Receiver subject to the adjudication by this Court as to who is entitled thereto.”**

The State of the case also shows that at the time Shane, the appellant, was placed into the possession of the property from which he received the \$19,370.32 said property was in *custodia legis*. See “Agreement” page 36 and “Order” page 41.

The State of the case further shows on page 36 “Agreement” line 26 and page 55 “Petition” line 31 that Shane was a non-resident of the State of New Jersey, a resident of the State of New York and that he had appeared and submitted himself to the jurisdiction of the Court making

the order from which he has appealed—page 7 line 20.

The reciting part of that order page 6 line 37 also shows that the Court at the time of pronouncing the same, in the presence of the counsel of said Louis S. Shane, also found that his operation of the hotel property had produced a profit of \$19,370.32 the title to which said sum was then the subject matter of controversy before said Court.

That the determination of such controversy should not result in the Court pronouncing an inefficacious decree because of the absence of the person or property upon which the decree should operate, the Court very properly, in view of its findings, made the order complained of.

As this order does not finally adjudicate the rights of the appellant we respectfully submit that such order was right and should be allowed to stand.

Halsted H. Wainright and  
Robert H. McCarter  
Solicitors for and of Counsel with  
Lakewood Trust Company.

The order form which is attached—page 7 line 20.

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Witness my hand and seal  
this 1st day of  
1902  
Secretary for United States  
Patent Office



