

In Chancery of New Jersey.

Between

WILLIAM H. JEFFERS,

Complainant.

and

THE NEW JERSEY AND PENNSYLVANIA RAILROAD COMPANY,

Defendant.

On Bill &c.

*On appeal of
the National
Iron Bank of
Morristown,
New Jersey.*

Brief for Appellant.

Facts.

January 14, 1913. Frederic V. Pitney, the Receiver of the defendant company, submitted to the Court a petition setting forth that he needed money to satisfy certain debts, future freight charges, rental of engines and other purposes, and praying authority to provide himself with sufficient funds by issuing certificates of indebtedness to be a first charge on the property of the company. (Page 1, &c.)

January 14, 1913. Upon the Receiver's petition an order to show cause was issued which, among other things, directed that the creditors of the defendant company should show cause before the Court on Tuesday, January 28th, 1913, why the Receiver should not be authorized and empowered, among other things, to raise sufficient funds either upon Receiver's certificates or otherwise, in order to protect the property of the company, and to operate the railroad, such certificates of indebtedness to be a first lien on the property, real and

personal of said railroad company, in preference to any mortgage or other lien or claim thereon. (Page 9 &c.)

January 14, 1913. An order was made that Pitney, Hardin & Skinner be the solicitors of the Receiver. (Page 12 &c.)

January 28, 1913. Affidavit of the Receiver was filed setting forth the necessity of borrowing money. (Page 13 &c.)

January 28, 1913. Order made directing that the Receiver have authority to borrow money by issuing Receiver's certificates of indebtedness maturing not later than twelve months from their date and not at any one time exceeding in amount \$7,000, and carrying interest at not exceeding the legal rate, such certificates to be a first lien on the property, real and personal of the defendant railroad company, in preference to any mortgage, judgment or other lien thereon, excepting only a certain mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees of Stephen Vail, deceased, dated April 26, 1900. (Page 20 &c.)

November 17, 1914. Petition of the National Iron Bank of Morristown, New Jersey, for an order to sell the property of the defendant company to pay the principal and interest of two certain Receiver's certificates, one made by Frederic V. Pitney, Receiver of the defendant company, February 14, 1913, for \$3,000, with interest from the date thereof, at the rate of six per cent. per annum, payable every three months, out of the property of the said defendant company, or the proceeds thereof, prior to any other debt or demand of any kind or character whatsoever; the other certificate bearing date June 13, 1913, for \$4,000, with interest from the date thereof at the rate of six per centum per annum, payable every

three months, out of the property of the defendant company or the proceeds thereof, prior to any other debt or demand of any kind or character whatsoever, except the aforesaid certificate for \$3,000. (Pages 23 &c.)

Copies of certificates of indebtedness are attached to the petition as Schedule B and Schedule C. (Pages 43-45.)

November 17, 1914. Order on the petition of the National Iron Bank of Morristown, New Jersey, directing the Receiver and creditors to show cause on December 8, 1914, why an order should not be made for the sale of any property in the hands of the Receiver, and for the sale and application of any property of the defendant company liable therefor, for the purposes of providing for the payment of the amount due to the bank for principal and interest of two certain certificates of indebtedness, in preference to any mortgage, judgment or other lien or claim thereon, excepting the aforesaid mortgage given by Charles D. Haines. (Page 50 &c.)

December 8, 1914. Order continuing the hearing on the order to show cause to December 29, 1914. (Page 56 &c.)

December 29, 1914. Order directing notice to be given to additional parties and continuing the former order to January 12, 1915. (Page 58 &c.)

January 12, 1915. Order further continuing hearing to January 26, 1915. (Page 61 &c.)

January 26, 1915. Order adjudging that there is due the National Iron Bank of Morristown, New Jersey, upon the two certificates of said Receiver, the sum of \$7,000 with lawful interest thereon from October 1, 1913, together with costs of suit, to be raised from and out of the real and personal property of the defendant company, and directing that said certificates of indebtedness were

a first lien upon all the property, real and personal of the defendant company, in preference to any mortgage, judgment or other lien or claim thereon excepting only the taxes due thereon to the State of New Jersey, and the aforesaid mortgage given by Charles D. Haines.

Further ordered that the railroad line of the defendant company, and all the real and personal property of the defendant company, including all its franchises, rights, privileges, effects, and all the assets of every character and description whatsoever, and all the right, title and interest of the Receiver be sold by the Receiver free and clear of any mortgage, judgment, Receiver's certificates, or other lien or claim thereon whatsoever, excepting the taxes and said mortgage.

Ordered further that out of the proceeds of sale the Receiver pay to the bank, or its solicitors, its said debt, interest and costs, and a counsel fee of \$250 and that in case more money should be raised by the sale than should be sufficient to satisfy such payment, such surplus money should be administered by the Receiver according to law, and the further orders of the Court, and that all the parties to the proceeding should be absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said real and personal property, when sold in accordance with the decree. (Page 67 &c.)

September 15, 1915. Order amending order to sell by directing the Receiver to make sale of entire property either as a whole or in parcels in his discretion, and that he proceed to make sale under the advertisement commenced by him. (Page 70 &c.)

October 18, 1915. Petition of Receiver setting forth the sale of the company's property for \$28,600 and praying for an order of confirmation. (Page 72 &c.)

October 18, 1915. Order confirming sale. (Page 82 &c.)

December 13, 1915. Petition and report of Receiver and final account showing in addition to the certificates unpaid obligations of the Receiver amounting to \$2,019.12 and a balance in Receiver's hands of \$13,985.77, and praying for an order approving and allowing the account and fixing and determining the fees and allowances of the Receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and providing for the payment of said fees, costs and allowances, and further directing the distribution of any balance of the funds in the hands of the Receiver among the holder of the Receiver's certificates and the various administration creditors, and praying to be discharged from further duty, and asking that his bond as Receiver be directed to be canceled and void. (Page 93 &c.)

December 13, 1915. Order directing stockholders, creditors, bond holders and mortgagees to show cause on December 29, 1915, why the petition and report should not be ratified and confirmed, and why an order should not be made fixing and determining the fees and allowances of the Receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and providing for the payment thereof, and why an order should not be made directing the distribution of any balance of funds in the hands of the Receiver, among the holder of the Receiver's certificates and the various administration creditors, not including three disputed claims, and why the Receiver should not be discharged. (Page 103 &c.)

February 17, 1916. Vice Chancellor Howell, who heard the argument on the return of the order filed an opinion advising the payment of \$3,000

and expenses to the Receiver, and \$3,000 and expenses to his counsel, and advising that the balance of funds be distributed *pro rata* among the holder of the Receiver's certificates and unsecured creditors of the Receiver of the defendant company. (Page 110 &c.)

February 23, 1916. Order approving Receiver's account, discharging the Receiver therein, and making the allowance asked for in accordance with the opinion of Vice Chancellor Howell. (Page 120 &c.)

February 26, 1916. Order entered amending the order approving the accounts, by making an allowance to the Receiver for additional expenses. (Page 128 &c.)

March 8, 1916. National Iron Bank of Morristown, New Jersey, filed its notice of appeal, and the same was served upon the respondents March 23, 1916. (Page 130 &c.)

April 5, 1916. Petition of appeal filed appealing from that part of the decree which provides for the payment of Receiver's compensation and expenses and his counsel's compensation and expenses in preference to the claim of the appellant, and to that part of the decree providing for the *pro rata* payment of the amount due on the Receiver's certificates and to the unsecured creditors. (Page 134 &c.)

April 10, 1916. Copy of petition of appeal served upon the solicitors of the Respondents. (Page 138.)

May 3, 1916. Formal answer to petition of appeal. (Page 139 &c.)

It will be noted that the Receiver and the Court subordinated the claim of the bank to the allowances to the Receiver and his counsel and their expenses, and directed the bank's claim to be paid

pro rata with the claims of the other creditors of the Receiver for obligations incurred or arising during the course of the Receivership.

There is due on the Receiver's certificates the principal sum of \$7,000 with interest from October 1, 1913, to which must be added the taxed costs of the National Iron Bank amounting to \$134.83 and a counsel fee to its solicitors of \$250. (Pages 67, 68.)

The holder of the Receiver's certificates claims priority in payment out of the moneys in the hands of the Receiver.

By the petition of the Receiver filed January 14th, 1913, (Record page 1) it appears that he needed money to satisfy the demands of the Central Railroad Company for freight charges in order to continue the business of the company, the Central requiring prepayment and the Receiver being unable to comply therewith; that future freight charges could be adjusted by making a cash deposit and thereby the ordinary freight business of the defendant company would be restored to it; that the Receiver had no moneys in his hands with which to make such deposit, and could not pledge any money that he might afterwards receive toward securing such freight charges, or raise money by Receiver's certificates, or otherwise, without the order of this Court; that money would also be needed for cash settlements of any balance due to the Central Railroad Company at short intervals; that the arrangement would also involve the making of a deposit in advance by the Receiver to cover the monthly rental of one or more engines rented from the Central Railroad Company, and that only upon such terms could the defendant company be allowed to continue in possession of the locomotive or locomotives, the defendant com-

pany owning none; that an approaching pay day would require a considerable sum of money for the payment of wages; that the sum of at least \$4,500 would be required for ties to be laid in accordance with an order of the Board of Public Utilities Commissioners of the State of New Jersey; that money was needed to pay a coal bill and the accrued charges, which it seemed necessary to pay and satisfy in order to continue an advantageous contract, and in and by said petition the Receiver prayed the aid of the Court in the premises and authority to issue Receiver's certificates of indebtedness "*to be a first lien* on the property, real and personal, of the said railroad company in preference to any mortgages thereon."

The order to show cause granted January 14, 1913, on this petition, and returnable January 28th, 1913, (page 9) recited "and the Court being of the opinion that under the circumstances of this case the Receiver should be given authority to raise sufficient funds to enable the Receiver to properly protect the property of the said Receiver's company and to operate the railroad by the issue of Receiver's certificates of indebtedness to be a first lien on the property, real and personal of the said railroad company *in preference to any mortgage, judgment or other liens or claims thereon*" excepting a certain mortgage held by the trustees of Stephen Vail, deceased, and an order made January 28th, 1913, and authorized the Receiver to procure money by the issue of Receiver's certificates of indebtedness, maturing not later than twelve months from their date, and not at any one time exceeding in amount \$7,000 and carrying interest at not exceeding the legal rate, such certificates to be a *first lien* on the property, real and personal, of the defendant company *in preference to any mortgage, judgment or other liens or claims thereon* excepting as aforesaid.

By virtue of the authority so conferred by the Court, the Receiver on the 14th day of February, 1913, executed to the National Iron Bank of Morristown, N. J., his certificate as Receiver for the sum of \$3,000, payable within twelve months from its date, with interest at the rate of six per centum per annum, payable every three months, out of the property of the company, or the proceeds thereof, and in and by this certificate he did certify that the same was issued under the authority of and pursuant to the aforesaid mentioned order of the Court of Chancery, and that the amount named in the certificate by the terms of said order was made a first lien and charge against the entire property of the railroad company, and the proceeds thereof, *prior to any mortgage, judgment, lien or claim whatsoever*, excepting the mortgage above referred to. (Page 43.)

On June 13, 1913, the Receiver executed a second certificate to the bank for \$4,000 with interest at the rate of six per centum per annum, payable every three months, out of the property of the company or the proceeds thereof; and in and by this certificate he did certify that the same was issued under the authority of and in pursuance of said order of the Court, and that the same remained unrevoked and unaltered, and that the amounts named in the two certificates were made first liens and charges against the entire property of the New Jersey and Pennsylvania Railroad Company, and the proceeds thereof, *prior to any other mortgage, judgment, lien or claim whatsoever*, except as above mentioned. (Page 45.)

The interest on these certificates defaulted and the National Iron Bank of Morristown, N. J., filed its petition for the sale of the property, real and personal, of the defendant company, to pay the certificates (page 23), and after public hearings in

open Court upon orders to show cause, at which the Receiver was present and also represented by counsel, an order was made on January 28th, 1915, (page 63) by which, after reciting the Receiver's certificates and the proceedings on the orders to show cause, it was adjudged that there was due the National Iron Bank of Morristown, N. J., upon the two Receiver's certificates the sum of \$7,000 with lawful interest from October 1, 1913, together with its costs of suit to be taxed, to be raised and paid out of the real and personal property of the defendant, the New Jersey and Pennsylvania Railroad Company, and that said certificates of indebtedness were *a first lien upon all the property, real and personal of the said defendant railroad company, in preference to any mortgage, judgment, or other lien or claim thereon*, excepting only the tax due to the State of New Jersey "and the mortgage held by the trustees of Stephen Vail, deceased," and it was thereby further ordered that the railroad line of the defendant company and all its real and personal property, including all its franchises, rights, privileges and effects, and all its assets of every character and description whatsoever, and all the right, title and interest of the said Receiver thereto, should be sold by the said Receiver free and clear of any mortgage, judgment, Receiver's certificates or other liens or claims thereon, excepting only the taxes and mortgage above mentioned, to raise and satisfy the said debt, interest and costs due to the National Iron Bank of Morristown, N. J.

And it was further ordered that out of the proceeds of the sale the said Receiver should pay to the said National Iron Bank of Morristown, N. J., or to its solicitors, its said debt, interest and costs, and to the solicitors of said bank, a counsel fee of two hundred and fifty dollars, and "*that in*

case more money should be raised by the sale than should be sufficient to answer such payment, such surplus money should be administered by said Receiver according to law and the further orders of this Court.'

Counsel for the Receiver contend that the distribution of the assets remaining in his hands should be made in accordance with the prayer of his report (page 100), and the final decree thereon (page 124).

It is not only manifest from the record of the present case that the parties interested considered the Receiver's certificates entitled to priority in payment, and not subject to any other claim or debt, but this Court has already judicially declared their status and adjudicated that they are entitled to priority.

The petition of the Receiver (page 1) for an order authorizing Receiver's certificates to be issued, showed the necessity of raising cash for the then immediate purposes of the Receiver in preserving the estate and to put the road in running operation, and in the prayer of that petition authority was asked to issue certificates which should be a first lien on the property, real and personal, of the railroad company. In accordance with the prayer of the petition this Court authorized the Receiver, in order to properly protect the property of the company and to operate the railroad, to issue Receiver's certificates and therein declared that they *should be a first lien on the property, real and personal, in preference to any mortgage, judgment or other lien or claim thereon, except the mortgage of the Vail estate.* (Page 21.)

The Receiver then issued his certificates to the National Iron Bank of Morristown, N. J., and therein declared that they were a *first lien and*

charge against the entire property of the railroad company and the proceeds thereof. (Pages 43 and 45.)

Subsequently an order to sell was made by this Court, whereby the Court decreed the certificates to be a *first lien* (page 67, line 14) and the Receiver was directed to pay the debt based on the Receiver's certificates with interest and costs and a counsel fee of \$250 out of the proceeds of sale, and to administer the surplus as directed by law and the further orders of this Court. (Page 68.)

It is not at all likely that the Iron Bank would have considered, for a moment, making a loan on the certificates had it known that there would be adverse claims, or a disposition to contest their priority, or that the certificates would not be protected, or that they in effect would not be a first lien on the property of the defendant company. It would have been hazardous to have made the loans without the protection which the bank believed and was justified in believing the order authorizing the issue of the certificates, by its express terms, guaranteed to it. The moneys were loaned on the strength of the order and with the full assurance by the explicit language thereof and the certificates and record that the certificates were to be first paid, and the bank is therefore entitled to full and complete satisfaction of its entire claim out of the moneys remaining in the Receiver's hands.

The final analysis of the decree of the Court below would result as follows:

Balance in hands of Receiver (page 122).	\$13,985.77
Allowances to Receiver and	
counsel (page 123).....	\$6,000.00
Receiver's taxed costs.....	1,283.01
Expenses (pp. 123, 129).....	113.70

Bank's taxed costs and counsel fee (page 123).....	384.83	7,781.54
Leaving		<u>\$6,204.23</u>
To pay:		
Receiver's certificates	\$7,000.00	
With interest from Oct. 1, 1913, to June 1, 1916.....	1,120.00	
	<u>\$8,120.00</u>	
Claims of administration creditors	2,019.12	
	<u>\$10,139.12</u>	
Deficit	3,934.89	\$6,204.23

RECEIVER'S CERTIFICATES (In General.)

"Receiver's certificates are of comparatively recent introduction. They are, generally speaking, merely evidence in the hands of the holder that he is entitled to receive from the fund under the control of the court the amount specified if the fund is sufficient to pay in full all holders of such certificates, or if it is not sufficient, then a *pro rata* share with other such holders."

34 Cyc., p. 296.

RAILROAD AND OTHER RECEIVERSHIP DISTINGUISHED.

"A practice has grown up incident to railroad receiverships, which has become firmly established by judicial sanction, whereby the receiver may be authorized to issue receivers' certificates for the purpose of paying the incidental and necessary expenses for carrying forward the business of the corporation, so that it may continue a going concern, and

thereby supplant or supersede prior liens,"
&c. * * *

"The reasons, however, for the authority to issue certificates for purposes beyond the immediate necessity of preserving and protecting the property have been held to be peculiar to railroad corporations, because they are quasi-public concerns * * * "

34 Cyc., p. 297 &c., and at p. 299.

It is settled in New Jersey that a receiver cannot borrow money and then claim compensation ahead of those from whom he borrows: Such a claim of priority for the receiver is contrary to equity, unless it is clearly understood by all parties at the time of the borrowing.

In *Nesler v. Industrial Land Development Co.*, (Court of Chancery of N. J., Dec. 31, 1903), 65 N. J. Eq. 491, at 494, Vice Chancellor Emery says:

"If receivers desire or intend to claim a preference in payment for their own compensation, they must apply to the court, not only for such order, *but also for the authority to incur indebtedness, which will be subject to their claim.* Upon such application the court can, by proper inquiry into the condition of the estate, make the orders necessary to control its receivers in the incurring of indebtedness, and also to give notice to persons dealing with the receivers, for services to the trust, that the receivers' personal claims for services are preferred. All claims for services rendered to the trust should be paid in full, if possible, as preferred claims and as expenses of the trusts, and where the fund in hand is not sufficient to pay in full, the claims should, in the absence of special equities, be paid *pro rata*.

It is apparent, on reading the evidence of these claimants as well as of the receivers, that the claimants expected to be paid from funds to be realized by the receivers from the property of the company, and not by the receivers personally; *but it is also apparent that when the debts were incurred none of these claimants understood that funds which were expected to come to the receivers' hands were to be applied by them to their own compensation, in preference.* In the absence of any such understanding, and in the absence of any *previous order* of the court making the receivers' compensation for their services an expense of the receivership to be preferred over the receivers' indebtedness incurred for the necessary services of others relating to the trust, I think all of these claims must be paid *pro rata* with the receiver's claims for compensation."

The above case was carried to the Court of Errors and Appeals and was there reversed because of a clerical error made in computing the amounts, although the Court expressly holds "*we agree with the conclusions of the Vice Chancellor.*"

64 Atl., p. 109.

The rule laid down by Vice Chancellor Emery remains in force in this State.

In view of the fact that the lien of the National Iron Bank was foreclosed and an order of the court was made fixing its priority before the order for priority was asked for by the Receiver, it would be improper to allow the Receiver's charges (which, of course, include counsel fees) to even *pro rata*.

A receiver authorized by the Court to borrow money on receiver's certificates is in somewhat

the same position as an executor authorized by a testator to borrow on mortgage.

The mortgage comes in ahead of all creditors except those of record and there is no way in which the executor can claim his compensation ahead of the mortgagee.

So it should be with the holder of a receiver's certificate.

The Receiver (and his counsel) in the case of the National Iron Bank is not equitably entitled to any compensation until the bank is paid, but under no view of the facts of the case can he be allowed more than his *pro rata* proportion.

Vice Chancellor Howell apparently does not consider that the opinion of Vice Chancellor Emery (given in 1903) should govern.

In considering that opinion, he says:

"No reference is made to the prior case (November, 1900) of Chesapeake & Ohio Railway *vs.* Atlantic Transportation Company, 17 Dick. 751, in which the Court of Errors and Appeals rendered a decision covering the point, and *which could not have been brought to the attention of the learned Vice Chancellor* who decided the Nessler case. In the Chesapeake & Ohio Railway Company case there were three classes of claims struggling for priority of payment out of the fund which was insufficient to pay them all in full. The Court of Errors and Appeals ordered them paid in the following sequence:

(1) The Receiver's allowance and the expenses of winding up the corporation, which would undoubtedly include counsel fees allowed to the receiver's counsel; (2) the franchise tax owing to the State, and (3) the liabilities other than the expenses of the receiver above mentioned incurred by the receiver in carrying

on the business in the due course of the administration of its affairs.

The Chesapeake & Ohio Railway Company case seems to be a clear authority in this State for directing the payment of receiver's fees and expenses of winding up, in preference to claims of other classes. No reasons are given in the opinion; it seems to have been taken for granted."

That Vice Chancellor Howell is in error we respectfully submit is evident.

1st—Because the opinion handed down in 1900 by the Court of Errors and Appeals does not support the conclusion of Vice Chancellor Howell, although he clearly states the finding of the Court of Errors and Appeals as below shown.

The opinion of the Court in *Chesapeake & Ohio Railway Company v. Atlantic Trans. Co.*, 62 N. J. Eq. (17 Dick.) 751, &c., reads as follows:

"The decree of the chancellor appealed from recites that the assets of an insolvent corporation were not sufficient to satisfy the liens thereon and the expenses of the receivership, and that the receiver had incurred heavy liabilities in carry on the business of the corporation at a loss, and that a franchise tax levied by the State *during the receivership* had not been paid. The attorney-general contended that this tax was entitled to preference in payment. The decree ordered, adjudged and decreed that the application of the attorney-general for the payment of franchise taxes to the State in preference to the receivers' allowance, and to the expenses of administration and to the liabilities incurred by the receivers in the course of administration, be denied."

From this decree the attorney-general has appealed.

Within the principle upon which the case of *United States Car Co. v. Crews*, 12 Dick. Ch. Rep. 357, was decided in this Court, the decree appealed from in the present case was correct in so far as it denied the application of the attorney-general for the payment of the franchise tax to the State in preference to the receivers' allowance and the expenses of winding up the corporation, and it was incorrect in so far as it denies the application of the attorney-general for payment of the franchise tax in preference to liabilities, other than such expenses incurred by the receivers of the insolvent company in carrying on the business or other course of administration of its affairs. To effect this modification a reversal of the decree of the Court of Chancery will be necessary."

The question of receivers' certificates is not considered in the *Chesapeake & Ohio* case and there is nothing in that case to prevent such certificates from ranking with the allowance and other expenses of the receiver in winding up the business and such certificates might even take priority in some cases without conflicting with the decision.

2nd—Because the conclusions of Vice Chancellor Emery conclusively support our position—aside from the error as to the question of fact these conclusions were approved by the Court of Error and Appeals as above shown on June 18, 1906, in the following words: "*We agree with the conclusions of the Vice Chancellor.*"

While it is possible that Vice Chancellor Emery might not have seen the decision of the Court of Errors and Appeals in the *Chesapeake & Ohio*

case it is not probable that the Court of Errors and Appeals itself could have overlooked it.

The members of that court in all probability remembered it and considered Vice Chancellor Emery's decision in harmony with it as it unquestionably is.

The Receiver (or his counsel) procured the loan from the bank and informed the officials of the bank that it was to be a first lien and the certificates were made a first lien by order of the Court at his request or at the request of his counsel.

Instead of procuring an order making the lien of the certificates subject to his commissions and the counsel fee as he could have done under the decision in the Nessler case he had the certificate made a prior lien.

If he had had a provision inserted making the certificates subject to commissions and counsel fee the bank would not have loaned the money.

Under the ruling of the United States Circuit Court of Appeals in *Willcox v. Southern National Bank*, 211 Fed. Rep. 968 (March 12, 1914,) the certificates in question should have priority over the commissions of the receiver and the fee of his counsel.

The report of this case is given below in its entirety:

"Willcox et al. v. Southern Nat. Bank of Wilmington, N. C., et al.

Buell v. Kanawha Lumber Corporation.

(Circuit Court of Appeals, Fourth Circuit, March 12, 1914.)

No. 1232.

Receivers (S 128*)—Receivers' Certificates—
Priority of Payment.

Where, though attorneys rendered expensive and valuable services to receivers during protracted litigation, they acted for the complainant in instituting the original proceedings, procured the appointments of the receivers and the order authorizing them, upon the security of receivers' certificates, to borrow money to carry on the business, and assisted in negotiating loans, representing to the lenders that the certificates were ample security, and the lenders were compelled to employ independent counsel to defend their interests arising from the loans, the lenders' equities were superior to those of the attorneys, and, the fund in the receivers' hands being insufficient to pay both, it should be paid to the lenders.

(Ed. Note—For other cases, see *Receivers*, Cent. Dig., pp. 205, 210, 219-222; Dec. Dig., p. 128*.)

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston; Henry A. Smith, Judge.

Action by George F. Buell against the Kanawha Lumber Corporation. From a decree denying compensation as attorneys to P. A. Willcox and another, copartners as Willcox & Willcox, from a fund previously directed paid to the Southern National Bank of Wilmington, N. C., and others, such attorneys appeal. Affirmed.

Henry E. Davis, of Florence, S. C. (F. Barron Grier, of Greenwood, S. C., on the brief), for appellants.

A. G. Ricaud, of Wilmington, N. C., for appellees.

Before KNAPP and WOODS, Circuit Judges, and DAYTON, District Judge.

Per Curiam. The original cause has been before this court several times heretofore. It comes now upon an appeal from a decree of the court below, denying compensation to attorneys for the receivers for services rendered them, payable out of the fund in their hands which this court has heretofore approved the payment of to appellee banks in part payment of moneys lent the receivers upon credit of their certificates. *Boyce v. Bank*, 203 Fed. 698, 122 C. C. A. 82.

There can be no question that these attorneys rendered extensive and valuable legal services to these receivers during this protracted litigation, and it is to be regretted that they should fail of compensation therefor. To compensate them from this remainder of the funds would deplete, to that extent, the amount payable to the banks in return for the moneys lent by them to the receivers and expended by such receivers in their conduct of the business. This fund is now entirely inadequate to reimburse the banks. It is therefore a case of two innocent parties, one of whom must suffer. It appears from the record that these attorneys acted for the complainant in instituting the original proceedings, procured, as such attorneys, the appointments of the receivers and the order authorizing them, upon security of receivers' certificates, to borrow money to carry on the business of the company, and that they assisted the receivers in negotiating the loans from the banks, believing and representing to the banks that the certificates were ample security for

the loans made, and finally that the banks, in the course of these proceedings, have been compelled to employ and pay independent counsel to defend their interests arising from such loans. In view of these facts, we cannot help thinking that the superior equity is with the appellees, and that the court below did not err in the entry of the order and decree complained of, which must therefore be affirmed.

Affirmed.

IN REGARD TO THE CLAIMS OF ADMINISTRATION CREDITORS FOR CAR SERVICE AND DAMAGES TO SHIPPERS, which by the terms of the final order of the court below are to be paid *pro rata* with petitioner's claim (page 124).

A claim for operating expenses should be in a different class from receiver's certificates.

A man or railroad who deals with a bankrupt concern without having any protection or security by way of cash or receivers' certificates or otherwise does so at his peril.

He takes the chance of loss in the ordinary course of business but a person who loans money is assured by the court's order that he will have priority and should receive it.

Therefore such claims should be subject to the receiver's certificates.

It is respectfully submitted that the amount due the National Iron Bank on the Receiver's certificates should be first paid out of the balance in the hands of the Receiver, and that the decree of the court below should be reversed in so far as the same directs the compensation of the Receiver and his counsel to be first paid, and in so

far as the claims of the unsecured administration creditors are directed to be paid *pro rata* with the Receiver's certificates.

VREELAND & WILSON,
ALFRED ELMER MILLS,
ELMER KING,
Counsel For Appellant.

New Jersey Court of Errors and Appeals

Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY AND PENNSYLVANIA RAILROAD COMPANY,
Defendant.

NATIONAL IRON BANK OF MORRISTOWN,

Appellant,

and

FREDERIC V. PITNEY, Receiver,
and others,

Respondents.

*On Bill for
Receiver, etc.*

Brief for Respondents.

Frederic V. Pitney was appointed receiver of The New Jersey & Pennsylvania Railroad Company on December 31, 1912. The road runs from the outskirts of Morristown to Whitehouse Station in Hunterdon County. The receiver operated the road under the order of the Court until it was closed down by order of the Board of Public Utility Commissioners of this State, on the ground that the road was in an unsafe condition, which order was concurred in by the Court of Chancery.

At the beginning of the receivership the receiver found it necessary to borrow money to continue the operation of the road. On January 14, 1913, he filed his petition (Record, p. 1), and appropriate proceedings having been had, an order was made on January 28, 1913 (Record, p. 20), au-

thorizing the issue of receiver's certificates maturing not later than twelve months from their date and not at any one time exceeding in amount \$7,000, and carrying interest at not exceeding the legal rate. It was provided in the order that these certificates of indebtedness should be a first lien on the property, real and personal, of the defendant railroad company, in preference to any mortgage, judgment, or other liens or claims thereon, excepting a certain real estate mortgage on an outlying tract of land which has since been foreclosed. The receiver was, by leave of the Court, made a party to the foreclosure suit and was divested of title to the five and five one-hundredths acres of land covered by the mortgage by the foreclosure sale.

Prior to the hearing at which leave was given to issue the receiver's certificates, an affidavit was filed by the receiver (Record, p. 13) setting out the situation of the road more fully than had been done in the petition. At the conclusion of this affidavit (Record, p. 19, ll. 13-15) Mr. Pitney set forth that in his judgment it would be "impossible to borrow money upon certificates made payable merely from the revenues of the road," the question having been raised as to whether this form of certificate would be sufficient, or whether the certificates should be a lien on the property itself of the road.

The two certificates issued by the receiver, one for \$3,000 and the other for \$4,000, will be found printed in the Record, p. 45, l. 28, to p. 49.

The Board of Public Utility Commissioners later on closed down the road, as above stated, the receiver being unable to make the extensive repairs and improvements required by the board in order to render the road in their judgment safe. The receiver thus found himself without any further

revenues and was forced to default in his interest payments to the appellant, the holder of the receiver's certificates. Thereupon the appellant took appropriate proceedings to foreclose the lien of the receiver's certificates (Record, p. 23 through p. 71). As ordered by the Court in said proceedings to foreclose, the receiver made effort to sell the property at private sale, but received no bids whatever. Thereupon a public sale, duly advertised in advance, was held by the receiver at the Court House in Morristown on September 21, 1915 (Record, p. 77, l. 30), and a total bid was received for the two parcels, in which the property was offered, of \$24,000. When the receiver reported the bid to the Court for confirmation the sale was not confirmed, one Frank B. Allen, Esq., representing to Vice Chancellor Howell that he was willing to bid in the property for a sum considerably in excess of the figure bid at the public sale.

Immediately after the Vice Chancellor announced his determination not to confirm the sale, the receiver with John B. Vreeland, Esq., representing the National Iron Bank of Morristown, the appellant; J. H. Thayer Martin, Esq., representing the highest bidder at the public sale; Frank B. Allen, Esq., and one George E. Fisher, Esq., went to the office of counsel for the receiver (Record, p. 78, l. 37, to p. 79, l. 12) and there in the presence of all the persons named, Allen made an offer to purchase the first parcel, the main railroad right of way, for \$27,000, and Fisher offered to purchase the second parcel, namely, certain lands fronting on Speedwell Avenue, Morristown, which had never been used for railroad purposes for \$1,600 (Record, p. 79, ll. 12-21). Opportunity was afforded by the receiver to said John B. Vreeland, Esq., counsel for appellant, and the other persons present, to make higher bids, but no one was willing to

give any larger sum for either parcel or for the property together in one parcel. The bids of Allen and Fisher were thereupon accepted and the sale to these persons duly confirmed by the court (Record, p. 82). The total amount received therefore was \$28,600. The sales made by the receiver in accordance with the order of the court were made free from all liens, excepting the taxes due to the State of New Jersey (Record, p. 95, ll. 27-33).

Thereafter the receiver filed his petition and report and final account (Record, p. 93) setting forth that after paying from the proceeds of sale as ordered by the court the taxes due to the State of New Jersey, which through the efforts of the receiver had been compromised from a sum approximating \$45,000 to the sum of \$15,000 (Record, p. 95, ll. 27-40), he had a balance remaining in his hands of \$13,985.77 (Record, p. 96, l. 9).

The questions at issue in this cause have arisen as to the distribution of this fund. The receiver and his counsel asked for allowances of \$3,000 each, and a notice to that effect (Record, p. 109) was sent out to all parties interested along with the order to show cause why the receiver's accounts should not be allowed and distribution of the funds in his hands made. The propriety of these allowances was not questioned in any way at the hearing, nor has it been questioned since that time, and Vice Chancellor Howell found that the allowances asked were proper, and that the services of the receiver and his counsel were worth the amounts named (Record, p. 113, ll. 17-27, and p. 121, ll. 30-37). The only question raised was as to priorities.

Vice Chancellor Howell held that these allowances to the receiver and his counsel, together with their respective disbursements and the taxed costs in this matter, should be first paid out of the fund in the receiver's hands, the balance of the fund to be ap-

plied to the appellant's claim of approximately \$8,000 as holder of the receiver's certificates (Record, p. 124, ll. 12-15), and other unpaid administration expenses totaling about \$2,000 (Record, p. 98, l. 14). These last claims were for cross-ties furnished to the receiver while he was operating the road and for car service due to other roads.

At the hearing on the return of the order to show cause above mentioned, no one appeared except Judge Vreeland, representing the National Iron Bank of Morristown. This was in spite of the fact that copies of the order to show cause had been sent to every one of the claimants making up the above mentioned \$2,000 claims, and also to all other persons in any way interested. The order to show cause, after fully setting forth the situation, contained a recital (Record, p. 105, l. 39, to p. 106, l. 10) of the fact that the balance in the receiver's hands was insufficient to pay the allowances to receiver and his counsel and the various administration creditors, and contained the further recital (Record, p. 106, ll. 18-27) of the receiver's contention, as stated in his petition, that allowances to the receiver and his counsel and the taxed costs constitute a first claim upon the fund in hand. The order to show cause (Record, p. 108, ll. 9-13) extended leave to all persons interested to appear before the court on the return day and be heard upon the method of distribution to be ordered of the balance of the fund in the hands of the receiver.

The opinion of Vice Chancellor Howell is printed in the Record, pp. 110-119, and we would refer the court to same as a careful and painstaking review of the question here at issue. The opinion will also be found reported in 97 *Atl. Rep.*, p. 32 (Pamphlet No. 1 for May 4, 1916).

The order appealed from advised by Vice Chancellor Howell will be found printed in the Record at p. 120. This order, after directing payment of

the allowances, taxed costs and disbursements to the receiver and his counsel, directs that the counsel fee of \$250 and taxed costs of \$134.83 of Messrs. Vreeland & Wilson, solicitors for the National Iron Bank of Morristown, New Jersey, upon their proceedings to foreclose the lien of the receiver's certificates should next be paid (Record, p. 123, ll. 35-40). The order then provides that all the surplus remaining in the receiver's hands shall be paid and disbursed pro rata to the administration creditors named in the order, namely, the National Iron Bank of Morristown, the holder of the receiver's certificates, and the other administration claimants above mentioned for cross-ties and car service whose claims total \$2,019.12. The order provides that certain claims against the receiver made by shippers on account of alleged losses from fires and other casualties and which have been disputed by the receiver, should have no share in the funds in the receiver's hands, these parties having been duly notified that their claims were disputed and having failed to appear (Record, p. 125, l. 35, to p. 126, l. 35).

The allowances, disbursements and taxed costs of the receiver and his counsel should first be paid from the funds in the receiver's hands before any other payments are made therefrom.

In *Chesapeake & Ohio Railway Company v. Atlantic Transportation Company*, 62 N. J. Eq. 751, decided by this court, the opinion being by Mr. Justice Garrison, where there was a claim by the State for payment of a franchise tax and claims for certain liabilities incurred by the receiver in carrying on the business, it was held that payment should be made in the following order:

(1) The receiver's allowance and the expenses of winding up the corporation.

(2) The franchise tax.

(3) The liabilities (other than the expenses above mentioned) incurred by the receiver in carrying on the business or other course of administration of its affairs.

The above case will be found cited in *Dill on Corporations* (1911 Ed.) pp. 204 and 272.

Smith on Receiverships (Ed. of 1897), sec. 350, p. 588:

“The receiver is entitled to compensation in priority to receiver’s certificates or claims of laborers.”

In the footnote the following case is cited:

Petersburg Sav. & I. Co. v. Dellatorre, 70 Fed. 643 (Circuit Court of Appeals for the Fifth Circuit, 1895).

In this case the order authorizing the issue of the certificates declared them to be “a first lien upon all the property, effects, rights and franchises of said railroad company, prior to the lien of the mortgages XXX and to all other liens thereon.”

High on Receivers (4th Ed. 1910) sec. 809, p. 961:

“The costs of the appointment of a receiver are entitled to priority of payment out of the fund, realized by him, before all other demands. And the costs of a receivership are properly given a preference over prior liens, although the appointment of the receiver was made without prejudice to prior liens.” Citing *Read v. Corcoran*, 1 Ir. Ch. N. S. 235 and *Gallagher v. Gingrich*, 105 Iowa, 237; 74 N. W. 763.

High on Receivers, sec. 805, p. 955: Counsel fees are in exactly the same category as allowance to the receiver. (The receiver’s counsel in the present case were appointed by order of this court at the commencement of the receivership, Record, p. 12).

4 *Cook on Corporations* (7th Ed.) 879, p. 3423.

"A receiver will be allowed a reasonable compensation for his services. In the case of a railroad receiver more than ordinary ability and responsibility are involved, and the court recognizes this fact in fixing the compensation. Each case, however, turns on its own facts. The former tendency of the courts to allow very high compensation has been rebuked by the Supreme Court of the United States, but this does not limit the power of the court to pay sufficient compensation to enable it to obtain a competent receiver.

Page 3431, "Compensation to the receiver and his counsel has a preference over receiver's certificates."

On the point of preference for receiver and his counsel the following cases, among others, are cited:

Petersburg Sav. & I. Co. v. Dellatorre, 70 Fed. 643, *supra*.

In re Glasdir Copper Mines, Limited, (1906), 1 Ch. 365; 75 L. J. Ch. 109. Advances for the preservation of a limited company's assets were made to a receiver and manager by a party to a debenture-holders' action under an order of court, which directed that the sums advanced should be a first charge on the assets in priority to the debenture-holders. It was held that the receiver and manager was nevertheless entitled to take his costs and expenses properly incurred out of the assets in priority to the sums advanced.

Headnote 3 is as follows:

"An order was made in a debenture-holders' action against a mining company appointing a receiver and manager. Successive orders were then made on the application of the plaintiffs giving the receiver and manager liberty to borrow, on the security of first charges to be

created by him, certain sums of money for the purpose of preserving the company's property and carrying on the business. The receiver and manager borrowed the money from the plaintiffs themselves on the security of deeds executed by him and creating first charges in their favour on the property of the company comprised in the debentures. By each of those charges the receiver and manager expressly stipulated that he should not be personally liable to repay the sums advanced out of his own moneys; but he made no express reservation of his right to be indemnified out of the assets in respect of his costs and expenses properly incurred. He then continued to carry on the company's business, but it proved a failure, and he eventually realized the assets, but the proceeds were insufficient to satisfy both his costs and expenses (including his remuneration allowed by the court) and also the plaintiff's charges:

"Held by the Court of Appeal (affirming Joyce, *J.*) that, inasmuch as, in the circumstances, the receiver and manager had acted in the preservation and realization of the assets for the benefit of every one concerned, he was entitled to indemnity out of the assets in priority to the plaintiffs and all other persons for whose benefit he had so acted."

Stirling, *L. J.*, says at p. 383:

"However, no application was made to enforce the securities, and the receiver was allowed to complete the realization of the property, which has turned out disastrously. In my opinion, the orders were made, and the securities given and taken, in the expectation of all parties that by means of the money advanced the receiver would be enabled to realize the

property more advantageously—that is to say, in such a way as not only to repay the advances but to pay something to the debenture-holders. Things have turned out very differently; but inasmuch as the receiver, in my view, acted in the realization of the assets for the benefit of every one concerned, I think that he is entitled to indemnity out of the assets in priority to those for whose benefit he was acting. I agree with the decision of Joyce, *J.*, and think that the appeal fails.”

It is noteworthy that in the present case the receiver in making sale of the assets was acting for the benefit of the bank as well as all others concerned.

Cozens-Hardy, *L. J.*, says at p. 384:

“Apart from authority, I think there is great force in the argument that when the court has taken the administration of an undertaking into its own hands by means of an officer appointed to manage the undertaking, and finds it proper to procure money in order that the undertaking may be preserved or carried on to greater advantage with a view to ultimate realization, it can make no difference whether the person who finds the money is an outsider or is a party to the action. No personal liability to repay is contemplated in either case. The lender gets only a charge on the undertaking; and I doubt whether he can, by virtue of such a charge, stop the business. My impression is that his only right is to have repayment out of the proceeds of the undertaking as and when realized. And it might well be held that any person advancing money under these circumstances could not deprive the officer of the court of his proper demand for work done and services rendered in

the course of the carrying on and winding up of the business."

Cozens-Hardy, *L. J.*, then goes on to consider an earlier English authority, viz., *Strapp v. Bull Sons & Co.* (1895), 2 Ch. 1; 64 L. J. Ch. 658, questioning whether there may be a difference in the position of a stranger to the action who has lent money to the receiver and a party to the action who has lent money, and he indicates that while he respects the authority, he thinks there is no distinction.

The following language of Lord Halsbury, in *Strapp v. Bull*, *supra*, quoted by Vice Chancellor Howell in his opinion, is in point:

"I do not concur in the idea that it ever could have been contemplated that those who were to take upon themselves the burden of management and receivership should be left to speculate on whether or not they would ever get paid anything.

"It was an essential part of the arrangement that some one should manage this business, and it was necessarily implied in that arrangement that those who for the benefit of all concerned, and not merely for themselves, were entering into this arrangement and were carrying it on to its completion so that there should be an ultimate resulting fund capable of being divided, should themselves be indemnified for whatever they were doing, namely, carrying on these contracts; and if you look, not at each order separately by itself, but at the whole of the orders as one arrangement to which all were parties, and all tending to the same thing, it seems to me really to be free from doubt that that was the real meaning of the transaction."

That there is no distinction between the position of a stranger to the action who has lent money to the receiver and a party to the action who has lent

money, and that in either case the receiver's expenses are first to be paid, was expressly held after full review of the authorities in the following case (also referred to by Mr. Cook in his work on Corporations, *supra*.)

In re Boynton Limited (1910) 1 Ch. 519; 79 L. J. Ch. 247. A receiver was appointed for an insolvent corporation. On the date of his appointment an order was made that he should be at liberty to borrow a sum not exceeding 500 pounds and that the same should be a first charge on the assets. The receiver borrowed this sum from a bank. The paper given by the receiver to the bank, after reciting the order, further recited that the receiver charged all the property and assets in his hands "to the intent that the charge hereby created shall be a first charge upon the said property and assets and in priority to all the debentures issued by the said A. Boynton, Limited." This paper was executed by the receiver. It contained no expression of personal obligation on his part to repay the money.

The bank later made application to realize its security, and the receiver upon the sale of the whole of the assets had in his hands a sum a trifle in excess of 600 pounds. The question then arose as to the order in which the plaintiff's costs, the receiver's remuneration, and the bank's loan were to rank against the fund in court, which was insufficient to satisfy them all in full. It was held that the order just stated was the proper order of payment.

Warrington, *J.*, says at page 524:

"Under the circumstances Lloyds Bank put forward the claim to priority above mentioned. They contend that they are creditors of the receiver in respect of a debt properly incurred by him; that he is entitled to indemnity out of the assets before any costs other than those of realization in the strict sense are paid; that un-

der the principle of subrogation they are entitled to the benefit of his right of indemnity; and that he must pay his debts before he can take his remuneration.

“The claim thus put forward by Lloyds Bank depends, in my judgment, on the assumption that the receiver is personally liable to them for the 500 £., because unless he is so liable, he has no right of indemnity, and there would be nothing to which the principles of subrogation could apply. Is this assumption well founded? It is true that there is no express exclusion of the personal liability, but this is not conclusive if the right inference to draw from the transaction is that he did not intend to pledge his personal credit and the bank did not rely upon it. I think this is the right inference to draw. I should not hesitate to draw that inference from the nature of the transaction alone, and this view is supported by the judgment of Cozens-Hardy, *L. J.*, in *In re Glasdir Copper Mines, Ltd.* (1906) 1 Ch. 384.”

Warrington, *J.*, then quotes at length from that case. He continues at p. 525:

“What then is their position? They come in and take charge upon the assets of a business which is in course of realization by the court, and in my opinion they can take in satisfaction of their charge no more than that which is actually realized. The plaintiff has incurred his costs of the action, and the receiver has given his services, in the endeavor to realize as large a fund as possible for the benefit of the several persons having charges on it, and I think they are both entitled to be indemnified before the fund is applied in payment of these charges. The principle of *In re New Zealand Midland Ry. Co.* (1901) 2 Ch. 357, in my opinion, ap-

plies, as does the latter part of the passage of the judgment of Cozens-Hardy, L. J., read above. I think, therefore, that the plaintiff's costs of action as between solicitor and client and the remuneration of the receiver must first be paid, and the balance of the fund will be paid to the bank in part discharge of their debt."

The only cases additional to those above referred to which we have found on the subject of priority as between receiver's allowance and receiver's certificates are the following:

Pusey & Jones v. Pennsylvania Paper Mills, 173 Fed. 634 (C. C. M. D. Pa. 1909).

Headnote 1 is as follows:

"An order of a court of equity which has assumed the management of property, through its receiver, authorizing the issuance of receivers' certificates, to be a first lien on the property, must be construed to give them priority over other liens only, and cannot be held to prevent the court from first paying the expenses of the receivership from the proceeds of the property when sold."

The court says at page 637:

"It is said, however, that the court made the certificates a first lien on the property, and that having contracted for this, it cannot afterwards let in anything to impair its own decree. But the court cannot bargain away its powers, if, indeed it can be held to have done so. * * * They (the certificates) will now be respected and enforced, but not to the prejudice of what it was found necessary to do in the interest of all parties concerned, including the certificate holders themselves, as called for by subsequent events. The court, in so pledging the property

of the company, cannot be held to have tied its hands or stripped itself of authority to deal with it to this end. If that was not expressed in the order, it was implied. As said by Judge Jenkins, in *Anderson v. Condict*, 93 Fed. 349, 353, 35 C. C. A. 335, 339: 'It is not presumable that the court would divest itself of the power to pay the expenses of operations which it had assumed. That would be an act of *felo de se*.'

"What, it may well be asked, would have become of the receiver's certificates if it had so left them in the lurch? The priority given them by the order had relation to their standing with respect to other incumbrances, and was not with the idea of preferring them over administration expenses, subsequently incurred, which may therefore properly be first paid out of the proceeds of this sale, as provided in the foreclosure decree."

The decree in the above case was affirmed by the Circuit Court of Appeals for the Third Circuit, under the name *George M. Newhall Engineering Co. vs. Egolf*. The opinion, however, discusses priorities of claimants other than the receiver and the holder of the receiver's certificates. The question of these priorities was not taken up on the appeal. (185 Fed. 481.)

St. Louis Union Trust Co. v. Texas Southern Ry. Co., 126 S. W. 296 (Texas 1910).

Where receiver's certificates were made a "first lien" they were held to be subject to operating expenses of the railroad.

Horton v. Thomas McNally Co., 151 N. Y. S. 674 (N. Y. Sup. Ct. 1915).

Headnote is as follows:

"Where the receiver of an insolvent corporation, whose property consisted mainly of a con-

tract with the city of New York, under order of court and to save a forfeiture of the contract undertook and performed it for the preservation of the insolvent's property and the protection of its creditors, receiver's certificates given for money borrowed to finance and complete the contract were inferior to claims for administrative expenses, including fees of counsel, expenses of an intermediate and final accounting, and commissions due the receiver, which expenses were a prior and first lien upon the retained percentage due the receiver on the contract."

The order entered in accordance with the opinion in this case apparently provided for payment of certain administration creditors (corresponding to the creditors in the present case whose claims total \$2,000) prior to the holders of the receiver's certificates. On this account the order of the court was modified. See *Horton v. Thomas McNally Co.*, 153 N. Y. S. 429 (App. Div. 1915). Here it was held that the receiver's certificates should be paid before other creditors, and also it was held that the receiver's certificates in question were not inferior to claims for sums thereafter borrowed by the receiver to complete the work. The conclusion of the opinion fully supports our proposition where the court says:

"Upon final adjustment of any additional demands for services against the city, *and after what may be reasonably allowed as receiver's charges and for legal outlays* (the order should direct) that the outstanding receiver's certificates and unpaid notes given by the receiver be treated as of equal and co-ordinate ranking in distribution, except so far as special enforceable equities in favor of any such receivers' security or obligations may then be made to appear. As thus modified, the order is affirmed, without costs." (Italics ours.)

Wilcox v. Southern National Bank, 211 Fed. 968, cited on appellant's brief at p. 19, is not an authority against our position as will be hereinafter shown.

To postpone the allowances to receiver and his counsel to other claims or even to pro rate the claims, would be contrary to the rules everywhere established. In effect it would be to make the receiver personally liable in whole or in part upon his obligation properly incurred in the course of the receivership. The rule is well stated in 4 *Cook on Corporations*, 7th Ed., sec. 878, p. 3418.

"A receiver is not personally liable or responsible for any debts legally incurred or contracts legally made or damages done by him as receiver, or by his subordinates and employees.—He is liable for personal misconduct or neglect.—These are well-established rules. Were they not so it would be impossible to induce a responsible person to act as receiver. It often happens that some of the receiver's debts or liabilities are never paid, the assets or income being insufficient for that purpose."

Counsel for the appellant relies in his brief at p. 14 on the case of *Nessler v. Industrial Land Development Company*, 65 N. J. Eq. 491. This case was fully considered by Vice Chancellor Howell in his opinion in the present case, and he came to the conclusion that when Vice Chancellor Emery decided the *Nessler* case in 1903, the *Chesapeake & Ohio Railway Company* case, *supra*, decided by the Court of Errors and Appeals, 1900, had not been called to Vice Chancellor Emery's attention.

In our view, the case is not an authority against us. What Vice Chancellor Emery did in that case was to refuse to permit the receivers to retain money which they had applied to the payment of

their own services without any order of the court to that end. The opinion clearly disclosed the court's disapproval of the course that had been followed, the result of the receivers' presumption being that their claims for compensation, and the other administration expenses were ordered to be pro-rated. There is nothing in the present case on this point paralleling the *Nessler case*, and no reason appears why the receiver, or his counsel, in the present case, should be penalized.

Counsel for the appellant in his brief at page 18 criticizes the *Chesapeake & Ohio Railway Co. case* as a precedent for us, because the question of receiver's certificates was not there directly involved. Certainly the claims classed in that case as third in order of priority were broadly enough defined by this court to include receivers' certificates. Furthermore the claims in the *Nessler case*, which were held to be entitled to pro-rate with the receivers' allowance, were clearly not based on receivers' certificates. For these reasons the *Chesapeake & Ohio Railway Company case* is a much closer precedent for us than the *Nessler case*.

It is apparent from the opinion in the *Nessler case* that these administration claims, which were held to be entitled to pro-rate with the receiver's allowance, had not been incurred by express authority of the court. In other words, they parallel to a certain extent the \$2,000 claims in the present case, although these \$2,000 claims were incurred by the receiver under the order of his appointment directing him to run the road.

The *Nessler case* was reversed on technical grounds 64 *Atl.* 109, 70 *N. J. Eq.* 804. The *per curiam* in 64 *Atl.*, 109 contains an expression of approval of the conclusions of Vice Chancellor Emery. In the official report, however, in 70 *N. J. Eq.* 804 all expression of approval is omitted. Even if the

per curiam in 64 Atl. 109 is correct, it forms not the slightest basis for the conclusion that this Court regarded the *per curiam* as overruling the *Chesapeake & Ohio case*.

The *Nessler case* is clearly distinguishable as we have shown, but if not and literally followed, all the claims involved in the present discussion, inclusive of the appellant's receiver's certificates would pro-rate. The case is not in any view an authority for the priority of the receiver's certificates.

All that the *Nessler case* properly holds is that the order of the court is necessary in order to enable the receiver to utilize the preference to which he is entitled. The receiver in this case did not presume to remunerate either himself or his counsel and awaited authority of the court. The order of the Vice Chancellor appealed from was correct on the authority of the *Chesapeake & Ohio Railway Company case*, and the other cases cited *supra*.

The only other authority referred to by counsel for the appellant, in addition to the *Nessler case*, is *Willcox v. Southern National Bank*, 211 Fed. Rep. 968. This is at p. 19 of counsel's brief. This case is readily distinguishable. In the first place the opinion shows that the compensation of the receivers (if not of certain attorneys) was considered a proper claim to be first paid in priority to the holders of the receivers' certificates. The only question was as to whether the attorneys in question should also be compensated for their services in priority to the receivers' certificates. These attorneys had been active in negotiating the loans from the banks "believing and representing to the banks that the certificates were ample security for the loans made." In the present case counsel for the receiver had nothing whatever to do with procuring the loans from the appellant. Furthermore, as already shown, counsel in the present case were duly appointed by

order of the Court of Chancery solicitors for the receiver. It is apparent that no such order had been taken in the *Willcox case*, and the court throughout emphasized the fact that the attorneys whose claims were in issue were acting primarily for the complainant. After the order appointing solicitors in the present case was taken, it does not appear upon this record (and is not a fact) that the receiver's counsel thereafter represented any other interest.

Analogies supporting the propriety of Vice Chancellor Howell's order are to be found in statutory requirements as to distribution as construed by the courts.

Sullivan v. Horner, 41 N. J. Eq. 299, decided by the Prerogative Court, was a case where there were conflicting claims for preference under *Section 58 of the Orphans Court Act*, now in identical words *Section 66*. This read (before the amendment of 1916):

“66. Judgments entered of record against the decedent in his lifetime, funeral charges and expenses, and the physician's bill during the last sickness shall have preference and be first paid out of the personal and real estate of the testator or intestate.”

It was held that the funeral expenses of the decedent are preferred to the demands of his judgment creditors, when the assets are insufficient to satisfy all the preferred claims, and this notwithstanding the statute mentions judgments of record first in stating what claims are to be preferred. The gist of the opinion is that burial is the first requisite.

All through his brief counsel emphasizes the point that the various orders, etc., mentioning the receiver's certificates declared or described them as a first lien on the property of the railroad company.

What these orders mean is of course that the certificates are a first lien on the *net assets* of the railroad company; that is, it was in every instance contemplated that the remuneration of the receiver and his counsel and the taxed costs of the proceedings should first be paid.

Full support for this contention is found in a case decided by this Court covering a situation closely analogous to the present. *Lyle vs. Staten Island Terra Cotta Lumber Company*, 62 N. J. Eq. 797 (1900). In this case it was held that preferred claims for laborers should be paid in full, but that they must abate if it is necessary to encroach upon them to meet the expenses of the receivership. The statute applying to the situation was Section 83 of the Corporation Act which provides as follows:

“In case of the insolvency of any corporation the laborers and workmen, and all persons, doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.”

Certainly the language of the statute in declaring “a first and prior lien” is no stronger than the language of the various orders taken in the present insolvency, and yet Judge Adams, speaking for this Court, says in 62 N. J. Eq. p. 800:

“Preferred claims for labor are always to be paid in full, unless it be necessary to encroach upon them to meet the expenses of the receivership.”

A portion of the money borrowed on receiver's certificates may possibly have been used by the receiver to satisfy the claims of laborers. As to moneys so advanced, the bank of course could not have the laborer's preference under *Section 83 of the Corporation Act*. (See *Campbell v. Taylor Manufacturing Co.*, 64 N. J. Eq. 622). And yet even if the bank could have obtained a lien equal to the lien of the laborer, which has first consideration in the law, that lien could not have availed to interfere with proper remuneration to the receiver and his counsel. This is plain from the *Lyle case, supra*.

Counsel for the appellant argues in his brief that the receiver was a party to the proceedings to foreclose the lien of the certificates, and that the order establishing the lien and directing the sale adjudicated that the receiver's certificates were entitled to priority over the allowances to receiver and his counsel.

This question, however, had never been raised, and we are confident that neither in the minds of counsel nor the court at the time this order was signed was there the slightest doubt but that the receiver's expenses would constitute a first claim upon any fund realized. It is further noteworthy that the same Vice Chancellor advised the order, which the appellant asserts is an adjudication against the receiver, and the order from which an appeal has been taken to this Court (Record, p. 69, l. 15, and p. 127, l. 22).

Note particularly that in the petition of the National Iron Bank for an order to sell, the various liens that the bank desired to have subjected to its own lien were set forth at length (Record, pp. 28-37). After the statement of each lien the phrase employed in the ordinary fore-

closure bill is used "but your petitioner charges that said last mentioned mortgage is subject and subsequent to the lien of your petitioner's said two certificates of indebtedness and that the lien of your petitioner is prior to the lien of said mortgage." In this list of liens any reference to the lien of the receiver for his expenses is conspicuously absent.

So also in the prayer of the petition (Record, p. 40) it is asked that the property of the railroad may be sold "for the purpose of providing for the payment of the amount due to your petitioner for the principal and interest of the aforesaid two certificates of indebtedness, in preference to any mortgage, judgment or other liens or claims thereon except the aforesaid mortgage given by Charles D. Haines to the executors and trustees of Stephen Vail, deceased." Surely the liens referred to here in the prayer are those above referred to as listed in the bank's petition as in the ordinary foreclosure bill. The prayer did not contemplate that the bank should be paid before the allowances on account of the receivership. The only other alternative as to the theory of the bank's petition would be that the property be sold subject to the receivership allowances. That this would be the proper course has never been suggested by anybody.

We submit that the bank in its petition was quite correct in omitting all reference to the administration expenses. It went without saying that these were first, and what the bank wished was to have the net assets of the railroad applied in payment of the bank's lien. Counsel for the receiver adopted the same theory in the order confirming sale, and, in specifying the liens known to the receiver, freed of which the property was sold by him in accordance with the order of the court, he made no reference whatever to the receivership

expenses (Record, pp. 90 and 91). The purchasers have been willing to pay \$28,600 in cash for the property, relying upon this order as freeing it from all liens. Surely no one would now contend that a lien for administration expenses attaches to the property in the hands of the purchasers, because the administration expenses are not referred to in the order confirming sale. The receivership expenses require no reference. It is understood by every one who deals with the receiver that these are to be paid first at all events. When the receivership property is pledged, and the pledgee's lien is made prior to all other liens, the phrase has no potency to exclude payment of the administration expenses.

The taxes due to the State of New Jersey were not mentioned in the bank's petition. They were in the same category. Of course these taxes had to be paid before the bank could receive anything. The court so ordered and the payment of the taxes was made without being questioned by anyone.

It is idle to contend that a point has been adjudicated which has never theretofore been raised, discussed or argued. It seems to us quite apparent that the theory of all the papers filed in this cause and quoted by counsel in his brief was, that the receiver's certificates were a first lien on the *net assets* of the corporation.

This is not a new theory just evolved by counsel for the receiver. Prior to the sale to Allen and Fisher it was emphatically called to the attention of John B. Vreeland, Esq., who, as we have seen, representing the appellant, attended the sale to Allen and Fisher in the office of counsel for the receiver. In the presence of all the parties offers were made by Allen and Fisher and were accepted by the receiver only after full opportunity had been

afforded to John B. Vreeland, Esq. (Record, p. 79, ll. 21-29) to protect the bank's lien by buying in either the first parcel, the railroad right of way, or the second parcel, certain lands fronting on Speedwell avenue, described in four adjoining tracts (Record, p. 87), which had never been used for railroad purposes, or the whole as one parcel. See also the order confirming the sale to Allen and Fisher (Record, p. 89, ll. 17-23).

We would particularly call the Court's attention to the language of Vice Chancellor Howell in his opinion (Record, page 119):

"This view (that of the appellant) leaves out of sight the fact that the bank could not realize upon the certificates held by it without an administrative proceeding carried on by some one as it was in this case carried on by the receiver, and that such administrative proceeding could not be carried on without the expenditure of time and money, and that the persons administering the fund had no other place to apply to for reimbursement than to the fund itself."

It will be remembered that at the time the bank obtained an order that the receiver sell the property to foreclose the bank's lien, namely, in January, 1915, all of the railroad property was encumbered by taxes due the State in approximately the sum of \$45,000, which taxes were admittedly a lien prior to the Bank's lien. The property thus encumbered with the taxes could not be sold for a single dollar, and only when the taxes had been reduced by compromise through the efforts of receiver and his counsel was it possible to realize anything whatever upon a sale. These services rendered should not be lost sight of as a part of the proceedings referred to by the Vice Chancellor through which the bank was able to

realize something upon its claim. Without these services the bank would have received nothing. The services referred to were of course but a very small part of the actual work performed by the receiver and his counsel in this case.

It is respectfully submitted that the compensation of the receiver and his counsel and the expenses of the receivership are entitled to be paid in full out of the fund now in the receiver's hands.

JOHN R. HARDIN,
CORWIN HOWELL,
Of Counsel with Respondents.

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Petition of Receiver for Order to Issue Certificates.

Petition of Receiver.

Filed January 14, 1913.

In Chancery of New Jersey.

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

On Bill, Etc.

*Petition of
Receiver.*

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*To the Honorable, Edwin R. Walker, Chancellor of
the State of New Jersey:*

The petition of Frederic V. Pitney respectfully
shows:

(1) That by order of this Court made in the
above stated cause on the thirty-first day of Decem-
ber, nineteen hundred and twelve, he was appointed
receiver of the property of The New Jersey &
Pennsylvania Railroad Company, and that on the
second day of January, nineteen hundred and thir-
teen, your petitioner duly qualified and filed in this
Court his bond and oath of office as required in the
order appointing him receiver.

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(2) That said railroad runs from Watnong in
the Township of Morris, New Jersey, to White-
house Station, Hunterdon County, New Jersey,
where it connects with the line of the Central Rail-
road Company of New Jersey, which is the only

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Petition of Receiver for Order to Issue Certificates.

railroad that said defendant railroad connects with;
 that the freight business of the defendant company
 has been carried on under a traffic arrangement
 with the Central Railroad Company of New Jersey
 whereby it receives from said Central Railroad
 Company freight in cars of said Central Railroad
 10 Company or other railroads destined to points
 along the line of the defendant company, and the
 defendant company reships on such cars, when
 empty, any freight said company may have for
 transmission to points beyond its line; that under
 said traffic arrangement the shippers have not
 hitherto been compelled by said Central Railroad
 to prepay the charges for freight destined to points
 along the line of the defendant company, and mov-
 ing via the Central Railroad Company; that when
 20 your petitioner entered upon the performance of
 his duties as aforesaid a large balance was due to
 said Central Railroad Company from the defendant
 company for interchange of freight, and that said
 balance amounting as your petitioner has ascer-
 tained, to several thousand dollars, still remains
 unpaid to said Central Railroad Company.

(3) That since your petitioner has entered upon
 the performance of the duties of his office he has
 been informed that said Central Railroad Company
 30 has made an order that all freight shipped to points
 along the line of the defendant company shall be
 prepaid; that said order has been put into operation
 and that the result has been a large falling off in
 the freight business of the defendant company, be-
 cause shippers are in many instances unwilling to
 prepay freight charges on goods shipped by them;
 that your petitioner has requested said Central
 Railroad Company to rescind its said ruling, but his
 40 request has not been complied with; that your peti-
 tioner believes that the matter of the payment of

Petition of Receiver for Order to Issue Certificates.

future freight charges can be adjusted with said Central Railroad Company if your petitioner is permitted to make a deposit in cash to secure said future charges; that by the making of such deposit your petitioner believes that the ordinary freight business done by said defendant company will be restored to it; that your petitioner has no monies in his hands with which to make such deposit, and is advised that he has no authority to pledge any monies he may hereafter receive as receiver toward the securing of said freight charges or to raise money by receivers' certificates, or otherwise for that purpose without the express authority and direction of this Court. 10

(4) That any arrangement which your petitioner may effect with said Central Railroad Company will involve not only the making of a deposit as aforesaid but also cash settlements of any balance due said Central Railroad Company at short intervals; that said arrangement will also involve the making of a deposit in advance by your petitioner to cover the monthly rental of one or more engines rented from said Central Railroad Company by the defendant company; that your petitioner has been advised by letter from W. G. Besler, vice-president and general manager of said Central Railroad Company, that only upon such terms will the defendant company be allowed to continue in possession of said locomotive or locomotives; that the defendant company owns no locomotives of its own and has always rented such as it required from said Central Railroad Company; that your petitioner believes from an examination of the records of the business of the defendant company before his receivership that the returns from the business of the Railroad will probably be slightly insufficient for a time to make the pay- 20 30 40

Petition of Receiver for Order to Issue Certificates.

ments he is obliged to make to said Central Railroad Company as well as the other expenses of the operation of said Railroad; that the said cash payments to said Central Railroad Company must be made regardless of the amounts received by your petitioner, and as remittances from agents of the
10 company can conveniently only be made in some instances at intervals of three weeks, or perhaps a month, it might happen that your petitioner might not always be in funds, though the normal business of the road is resumed, to meet said cash payments due said Central Railroad Company, and your petitioner requests that he be authorized in such contingency to provide himself with funds for that purpose by issuing certificates of indebtedness to be a first charge on the property of the company.

20 (5) Your petitioner also shows that the next day for the payment of the wages of agents and other employees of the defendant company is Wednesday, the fifteenth day of the present month, and that on that day the pay-roll for the entire month of December, nineteen hundred and twelve, will become due; that said pay-roll amounts to about the sum of eighteen hundred dollars; that your petitioner has in his hands a sum of money just sufficient to meet said pay-roll but that said payment will leave
30 your petitioner with scarcely any cash. Your petitioner fears that unless these wages are paid in full the employees of the Railroad, who are all dependent on this wage for the support of their families, will leave your petitioner's employ, and so demoralize the force of the Railroad, and that your petitioner will have great difficulty in replacing the men and the operation of the Railroad will be seriously embarrassed thereby.

40 (6) Your petitioner further shows that on the tenth day of January, nineteen hundred and thir-

Petition of Receiver for Order to Issue Certificates.

teen, he was summoned before the Board of Public Utility Commissioners of the State of New Jersey, at a meeting of said Board in the Chancery Chambers in Jersey City, and interrogated as to the condition of the Railroad line and that at said hearing statements were made by the inspector of the Board to the effect that ten thousand new ties would shortly be required in order to make the road safe, and that other repairs to the road-bed would be necessary for that purpose; that your petitioner is advised that the sum of at least forty-five hundred dollars will be required for the purchase of said ties alone, and probably an even greater sum, without allowing for the cost of laying the same. 10

(7) That your petitioner is advised that the defendant company has a contract with the Pennsylvania Coal & Coke Company whereby said Coal Company has agreed to furnish to the New Jersey & Pennsylvania Railroad Company all the coal it needs until the first of April next at the rate of one dollar a ton at the mines; that a large balance is now due from the defendant corporation herein to said Coal Company upon said contract and that the contract provides that upon failure of the defendant corporation herein to make monthly settlements said contract may be abrogated at the option of said Coal Company; that said defendant corporation has defaulted in said payments and at the present time owes a considerable sum to said Coal Company for coal furnished under said contract and that said Coal Company has threatened to abrogate its said contract; that the price of one dollar a ton for coal is an advantageous one and that the abrogation of said contract at the present time would work serious injury to the defendant corporation; that your petitioner has no money in his hands with which to pay the accrued charges for coal to said 20 30 40

Petition of Receiver for Order to Issue Certificates.

Coal Company and is advised that he has no authority to prefer said Coal Company without express direction of this Court, even though sufficient money to pay said bill should come into his hands.

10 (8) That the property now in your petitioner's hands as received, so far as he can ascertain and as he is informed and believes, is subject to mortgages as follows:

(a) A mortgage for two hundred thousand dollars given to Commercial Trust Company a corporation of the State of New Jersey, as trustee, covering all of the assets of the Road and securing an issue of bonds of that amount.

20 (b) A mortgage for five hundred thousand dollars given to Commercial Trust Company of New Jersey, a corporation of the State of New Jersey, as trustee, covering all of the assets of the Road, and intended to be a first refunding mortgage. No bonds have been issued under this mortgage.

(c) A mortgage for seventy-five hundred dollars covering property of the Speedwell Lake Railroad Company held by Alfred Mills, Esquire, as surviving executor and trustee of Stephen Vail, deceased.

30 (d) A mortgage for about six thousand dollars held by one George E. Fisher covering property of the Speedwell Lake Railroad Company.

Your petitioner therefore prays the aid of the Court in the premises, and that he may be authorized to make such deposit or deposits to secure freight charges, and to secure the rent of engine or engines as may be necessary to effect an arrangement for those purposes with said Central
40 Railroad Company of New Jersey, and that he may

Petition of Receiver for Order to Issue Certificates.

be authorized to pay immediately the wages of the employees of said company for the month of December, nineteen hundred and twelve, and that he may be authorized to pay immediately in full the bill of the Pennsylvania Coal & Coke Company for coal furnished to the defendant company prior to your petitioner's appointment as receiver, and in the future to settle monthly for any coal furnished by said Pennsylvania Coal & Coke Company to the defendant corporation, and also to meet any future payments that may be due to said Central Railroad Company of New Jersey under said arrangement, and also to raise sufficient funds for the purchase and laying of ties for said Railroad, and for other repairs to its road-bed and otherwise to enable said receiver properly to protect the property of said Railroad Company and to operate said Railroad; that your petitioner for the purposes aforesaid may be authorized, as the occasion may require, to issue receivers' certificates of indebtedness to be a first lien on the property, real and personal, of said Railroad Company in preference to any mortgages thereon, and for such other relief as may be appropriate.

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

PITNEY, HARDIN & SKINNER,

Solicitors for Petitioner.

Frederic V. Pitney.

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Petition of Receiver for Order to Issue Certificates.

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

Frederic V. Pitney, being duly sworn on his oath
says that he is the receiver appointed by the court
in the above stated cause on the thirty-first day of
December, nineteen hundred and twelve; that he has
10 read the foregoing petition and that the facts
therein stated are true to the best of his knowledge
and belief.

FREDERIC V. PITNEY.

Subscribed and sworn to, before me,
this 14th day of January, 1913.

CORWIN HOWELL,
Master in Chancery of New Jersey.

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Order to Show Cause.

Order to Show Cause.

Filed January 14, 1913.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

On Bill, Etc.

*On Petition
of Receiver.*

*Order to
Show Cause.*

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Upon reading and filing the duly verified petition of Frederic V. Pitney, receiver of The New Jersey & Pennsylvania Railroad Company, filed this day:

It is on this fourteenth day of January, nineteen hundred and thirteen, on motion of Pitney, Hardin & Skinner, solicitors for said receiver, ORDERED that said receiver be and he hereby is authorized to make such deposit as may be necessary, not exceeding the sum of one thousand dollars, to secure future accruing freight charges due to the Central Railroad Company of New Jersey, and to secure the rent of engine or engines from said Central Railroad Company of New Jersey, and it is further ordered that said receiver be and he is hereby authorized to pay the wages of the employees of the defendant company for services rendered before the appointment of said receiver within two months preceding such appointment on being satisfied of the correctness of the amount due for such wages, and that said deposit and said payment of wages

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Order to Show Cause.

may be made out of any monies now in the hands of the said receiver or hereafter paid to or borrowed by him under the authority of this Court.

10 And it is further ordered that the creditors of the defendant corporation in the above entitled matter, including the holders of the mortgages mentioned in the bill of complaint in the above entitled cause and in the above stated petition, together with the bondholders secured by said mortgages, do show cause before this Court on Tuesday, the twenty-eighth day of January, instant, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard at the Chancery Chambers in the City of Newark, why Frederic V. Pitney, receiver of The New Jersey & Pennsylvania Railroad Company, the corporation defendant in the above entitled cause, should not be authorized and empowered immediately to pay to the Pennsylvania Coal & Coke Company the amount due and to become due from The New Jersey & Pennsylvania Railroad Company under a contract between said companies for the furnishing of coal to said defendant corporation, and further why said receiver should not be authorized and empowered to raise sufficient funds, either upon receivers' certificates or otherwise, to enable said receiver to properly protect the property of said Railroad Company and to operate the Railroad, such certificates of indebtedness to be a first lien on the property, real and personal, of said Railroad Company in preference to any mortgage or other liens or claims thereon.

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And it is further ordered that notice of the order to show cause contained herein be given to the said creditors, bondholders and mortgagees so far as their names and addresses are known to the said receiver by mailing such notice to such creditors, bondholders and mortgagees at their last known

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Order to Show Cause.

post office addresses within four days from the date hereof, and that true but uncertified copies of this order be served upon the following mortgagees in said petition named: Corporation Trust Company, trustee, Alfred Mills, Esq., as surviving executor and trustee of Stephen Vail, deceased; George E. Fischer, Esq., or upon their respective solicitors, 10 within four days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

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*Order Appointing Solicitors for Receiver.***Order Appointing Solicitors for Receiver.**

Filed January 14, 1913.

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill, Etc.**Order**Appointing**Solicitors**for Receiver.*

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On this fourteenth day of January, nineteen hundred and thirteen, it is ordered by the court that Pitney, Hardin & Skinner be and they hereby are appointed solicitors for Frederic V. Pitney, Esq., the receiver of The New Jersey & Pennsylvania Railroad Company, the corporation defendant in the above entitled cause.

E. R. WALKER,

C.

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Respectfully advised:

J. E. HOWELL,

*V. C.**Clerk.*

A true copy:

SAMUEL K. ROBBINS,

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Affidavit of Receiver.

Affidavit of Receiver.

Filed January 28, 1913.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,
Complainant,
and
 THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,
Defendant.

On Bill, Etc.
On Petition
of Receiver.
Affidavit of
Receiver.

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

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Frederic V. Pitney being duly sworn according to law upon his oath, says that he is the receiver appointed by the court in the above stated cause on the 31st day of December, 1912, and that he is the petitioner named in the petition filed with this Court on the 14th day of January, 1913, upon which petition an order to show cause was made on said 14th day of January, 1913, returnable on January 28, 1913; that when deponent entered upon the performance of his duties a large balance was due to the Central Railroad Company of New Jersey from the defendant company for interchange of freight; that said balance remains unpaid; that since deponent has entered upon the discharge of his duties an order has been put into effect by said Central Railroad Company that all freight shipped to points along the line of the defendant company should be prepaid, and that said order has resulted in a fall-

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Affidavit of Receiver.

ing off in the freight business of the defendant company; that deponent has requested said Central Railroad Company to rescind its said ruling, and on the 16th inst. was advised by W. G. Besler, vice-president and general manager of said Central Railroad Company, by letter dated on that day, that
10 the said Central Railroad Company of New Jersey was not in a position at that time to comply with deponent's request; that it is of great importance that this order should be rescinded and that shippers should again be allowed to send freight without prepaying the same; that such arrangement can only be effected, if at all, by making a deposit in cash with said Central Railroad Company to secure said future charges, and that several hundred dollars will probably be required for that purpose;
20 that deponent by said order dated January 14, 1913, was authorized to make a deposit, not exceeding one thousand dollars, but that he has not yet made any deposit to secure freight both because he still hoped to be able to get said order rescinded and for the further reason that he has not had funds available for that purpose.

That deponent has paid said Central Railroad Company of New Jersey the sum of two hundred and fifty dollars on account of rent of locomotive
30 or locomotives for the month of January, and that before the first of February, nineteen hundred and thirteen, a payment of a similar or greater amount will be necessary to secure the rent of said locomotive or locomotives for the ensuing month; that deponent has been able to retain the use of said locomotives only by paying the rent due for the same in advance.

That the Central Railroad Company of New Jersey, as above stated, has required prepayment of
40 freight shipped to points along the line of the de-

Affidavit of Receiver.

fendant company, and that the result of this has been that said Central Railroad Company has received a large excess of monies for freight due to the defendant company over the amount due from the defendant company to the Central Railroad Company for freight; that said Central Railroad Company is slow in remitting to deponent balances for freight, and that a period of two months is likely to intervene, as deponent is advised, before deponent will receive any settlement from said Central Railroad Company; that in the meantime and before any such settlement with said Central Railroad Company can be expected, the obligations above mentioned for rent of locomotives will become due and must be met. 10

That deponent has other obligations to meet in said interval, in particular the pay-roll of the employees of the railroad for the month of January which will become due on the 15th day of February and will amount to about the sum of eighteen hundred dollars, and probably the pay-roll due on the 15th day of March for the same amount; deponent is further required to pay out about the sum of six hundred dollars on or about the first of each month for carting done for the preceding month between Watnong, the terminal of the defendant railroad company in Morris County, and the Town of Morristown, a distance of about one and one-half miles; that the bill for teaming for the month of January has not been paid and that it is therefore probable that two payments for teaming will become due, namely, on February 1st and March 1st, before the freight balance due from the Central Railroad Company to the defendant company will be paid to deponent; that on or about the tenth day of January, 1913, deponent was summoned before the Board of Public Utility Commissioners of the State of New 20 30 40

Affidavit of Receiver.

Jersey at a meeting of said Board in the Chancery Chambers in Jersey City, and interrogated as to the condition of the railroad line, and that at said hearing statements were made by the inspector of the Board to the effect that ten thousand new ties at least would certainly be required in order to
10 make the road safe, and that other repairs to the road-bed would be necessary; that your deponent is advised that the sum of at least forty-five hundred dollars will be required for the purchase alone of ten thousand new ties and probably an even greater sum, without allowing for the cost of laying the same; that at said hearing it was arranged that the inspector of the Board should confer with de-
20 ponent as to the laying of said new ties and making of other repairs, and that an inspection of the road should be made for that purpose; that it was further arranged that after such inspection had been made said inspector and deponent should agree upon what work should be immediately done; that deponent has not yet made such inspection but that deponent has no doubt from his knowledge of the road and the statement of said inspector that a considerable sum of money amounting at least to several thousand dollars will be required shortly for the purposes aforesaid, the principal items of
30 expenses being ties and bridge timbers which must be constantly supplied:

That the defendant company had a contract with the Pennsylvania Coal & Coke Corporation whereby said coal corporation agreed to furnish to the defendant company all the coal required until the 1st of April, 1913, at the rate of one dollar a ton at the mines; that a balance of three hundred and eighty-two dollars and thirty-seven cents is now
40 due from the defendant corporation to said coal corporation for coal furnished; that said contract

Affidavit of Receiver.

provides that upon failure of the defendant corporation to make monthly payments said contract may be abrogated at the option of said coal corporation; that the price of one dollar a ton for coal is an advantageous one and that the abrogation of said contract at the present time would work serious injury to the defendant corporation; that deponent is advised that it would now cost at least the sum of one dollar and seventy-five cents per gross ton if a contract should be made at the present time for coal at the mines, and that in all probability, and especially if cold weather ensues, it will cost considerably more than that sum; that in response to deponent's inquiry of said Pennsylvania Coal & Coke Corporation as to whether said corporation would continue said contract, deponent has been advised by a letter signed by N. W. Campbell, sales agent of said corporation, which letter was dated the 22d inst., that the treasurer's department of said Pennsylvania Coal & Coke Corporation had advised that said corporation could arrange to make shipments on contract with the New Jersey & Pennsylvania Railroad Company billing same to deponent as receiver; that said letter also states that said Pennsylvania Coal & Coke Corporation expects that the amount now due should be paid; that deponent is advised that said railroad will require at least three hundred and fifty tons before the first day of April, 1913, over and above the amount of coal that it now has on hand, and that possibly a greater amount will be required before said date; that it will be to the advantage of all the creditors of the defendant corporation that the coal required, as above stated, be furnished at the present contract price, and that it will therefore be to the advantage of all of said creditors, as deponent believes, that the present balance due to said Pennsylvania Coal & Coke Corpor-

Affidavit of Receiver.

ation should now be paid in full to prevent the abrogation of said contract.

That deponent at the present time has in his hands about the sum of three hundred dollars and that owing to the delay of the Central Railroad Company in remitting for freight balances as above
10 mentioned, and to the fact that the agents of the defendant railroad are making very small payments owing to the order promulgated by the Central Railroad Company, as above set forth, the receipts coming to deponent's hands within the next two months at least will be meager; that deponent for the various purposes above named will require cash in hand of at least three thousand dollars within the next two months and that thereafter further sums will be required for ties, bridge timbers and other
20 repairs to the railroad property; that the amount of cash required for that purpose cannot yet be determined, but that deponent is advised and believes that at least the sum of four thousand dollars will be necessary within a short time, making the sum of seven thousand dollars in all; that deponent therefore asks the authority of this Court to raise said sum by the issue of receiver's certificates of indebtedness to be a first lien on the property, real and personal, of the said railroad company in preference to any mortgages or other claims thereon;
30 that deponent is of the opinion that it would be unwise to ask at the present time for the authorization of a portion only of said seven thousand dollars required, because of the extreme difficulty of marketing any further certificates after a prior issue has been placed; that deponent will ultimately need at least the sum of seven thousand dollars for the purposes aforesaid and that he believes that an entire issue to this amount can be arranged for
40 with a responsible bank in the Town of Morristown

Affidavit of Receiver.

at the present time, deponent having the leave of this Court to issue in his discretion certificates not exceeding the above mentioned amount, in the sums needed from time to time to operate and protect said railroad. Deponent further says that he is advised that he can borrow money in sufficient amount for the purposes above mentioned only upon certificates which are a first lien on the property of said railroad company, and that it will be impossible to borrow money upon certificates made payable merely from the revenues of the road. 10

FREDERIC V. PITNEY.

Subscribed and sworn to before me
this 24th day of January, 1913.

CORWIN HOWELL,

Master in Chancery of New Jersey.

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*Order Authorizing Receiver's Certificates.***Order Authorizing Receiver's Certificates.**

Filed January 28, 1913.

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill, Etc.**Order on
Petition Filed
January 14,
1913.*

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An order to show cause having heretofore been made in the above entitled cause on filing the petition of the receiver herein on the fourteenth day of January, nineteen hundred and thirteen, and proof by affidavit of the mailing of the notice of said order to the creditors, bondholders and mortgagees of the defendant corporation as required by said order, and proof of service of copies of said order made as required by the said order, having been

30 presented to the court and filed, and the court having heard Corwin Howell, Esq., representing Pitney, Hardin & Skinner, for the said receiver and also for the said complainant as creditor, and Edward K. Mills, Esq., for Alfred Mills, surviving executor and trustee of Stephen Vail, deceased, mortgagee, and the court being of opinion that under the circumstances of this case the receiver should be given authority to raise sufficient funds to enable the said receiver to properly protect the

40 property of the said railroad company and to

Order Authorizing Receiver's Certificates.

operate the railroad by the issue of receiver's certificates of indebtedness to be a first lien on the property, real and personal, of the said railroad company in preference to any mortgage, judgment or other liens or claims thereon, except the mortgage of the said Alfred Mills, surviving executor and trustee of Stephen Vail, deceased, and it appearing 10
that there are no preferred claims against the defendant corporation remaining unpaid to this date; and the court being of opinion there being no objection thereto that the bill of the Pennsylvania Coal & Coke Corporation amounting to the sum of three hundred and eighty-two dollars and thirty-seven cents for coal furnished to the defendant corporation, should be paid in full by the said receiver without delay;

It is on this twenty-eighth day of January, nineteen hundred and thirteen, on motion of Fitney, Hardin & Skinner, solicitors of the said receiver, ORDERED that the said receiver have authority to borrow money by the issue of receiver's certificates of indebtedness maturing not later than twelve months from their date, and not at any one time exceeding in amount seven thousand dollars, and carrying interest at not exceeding the legal rate, which certificates of indebtedness shall be a first 20
lien on the property, real and personal, of the said defendant railroad company, in preference to any mortgage, judgment or other liens or claims thereon, except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the Clerk's office of the County of Morris on the fifth day of May, nineteen hundred, securing the bond of even date of the said 30
Charles D. Haines, conditioned for the payment of 40

Order Authorizing Receiver's Certificates.

Seventy-Five Hundred Dollars in two years from date, with interest at five per cent. on the land described in said mortgage comprising five and five hundredths acres in the town of Morristown, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company.

- 10 And it is further ordered that the bill of the Pennsylvania Coal & Coke Corporation amounting to the sum of three hundred and eighty-two dollars and thirty-seven cents for coal furnished to the defendant corporation be forthwith paid in full by the said receiver from any funds in his hands available for that purpose.

E. R. WALKER,
C.

- 20 Respectfully advised:

FREDERIC W. STEVENS,
V. C.

A true copy:

SAMUEL K. ROBBINS,
Clerk.

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Petition of National Iron Bank for Order to Sell.

Petition of National Iron Bank.

Filed November 17, 1914.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,
Defendant.

On Bill, Etc.

*Petition of
National Iron
Bank of Mor-
ristown, New
Jersey for an
Order to Sell.*

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

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The petition of the National Iron Bank of Morristown, New Jersey, respectfully shows:

1. That on the twenty-eighth day of January, in the year nineteen hundred and thirteen, an order was made by this Honorable Court authorizing Frederic V. Pitney, who had theretofore been duly appointed by this Court and had been qualified as receiver of the defendant, the New Jersey and Pennsylvania Railroad Company, to borrow money by the issuing of receiver's certificates of indebtedness maturing not later than twelve months from their date and not at any one time exceeding in amount seven thousand dollars, and carrying interest at not exceeding the legal rate, which certificates of indebtedness should be a first lien on the property, real and personal, of the said defendant railroad company in preference to any mortgage, judgment or other lien or claim thereon, except only the

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Petition of National Iron Bank for Order to Sell.

mortgage given by Charles D. Haines to Alfred
 Mills and John H. Lidgerwood, surviving executors
 and trustees under the last will and testament of
 Stephen Vail, deceased, dated April twenty-sixth,
 nineteen hundred, and recorded in the Clerk's Office
 of the County of Morris, in the State of New Jer-
 10 sey, on the fifth day of May, nineteen hundred,
 securing the bond of even date therewith of the said
 Charles D. Haines, conditioned for the payment of
 seven thousand, five hundred dollars in two years
 after the date thereof, with interest at the rate of
 five per centum per annum, on the land described
 in said mortgage comprising five and five hun-
 dredths acres in the Town of Morristown, in the
 County of Morris and State of New Jersey, and
 subsequently conveyed by the said Charles D.
 20 Haines to the Speedwell Lake Railroad Company,
 a copy of which order, marked Schedule "A" is
 hereto annexed and is hereby particularly referred
 to and made a part hereof.

2. That the aforesaid mortgage given by Charles
 D. Haines to Alfred Mills and John H. Lidgerwood,
 surviving executors and trustees under the last will
 and testament of Stephen Vail, deceased, was duly
 recorded in the Morris County Clerk's office in
 Book H-5 of Mortgages on pages 524, &c., and that
 30 the premises covered thereby are described therein
 as follows:

ALL that lot, tract or parcel of land and prem-
 ises, hereinafter particularly described situate,
 lying and being in the Town of Morristown, in the
 County of Morris and State of New Jersey, which
 was conveyed to Stephen Vail by Robert Taylor and
 wife by deed dated the twentieth day of July, in
 the year of our Lord one thousand eight hundred
 and forty-four, and recorded on the same day in
 40 the Morris County Clerk's Office in Record of

Petition of National Iron Bank for Order to Sell.

Deeds, Liber E-4, page 116, &c., and butted and bounded (as by the original description) as follows:

"BEGINNING in the middle of the road leading from Morristown to Speedwell and being immediately on the top of the hill, thence running (1) north seventy degrees west seven chains and fifty links in a line with Joseph Cutler's land; thence (2) 10 north nineteen degrees east seven chains and thirty-six links to a corner of Joseph Cutler's land in a line of Stephen Vail's land; thence (3) south seventy-eight and a half degrees east seven chains and twelve links to the middle of the aforesaid road; thence (4) south three degrees west four chains and eight links along the middle of the said road; thence (5) south twenty-two degrees and a half west four chains and sixty-three links to the place of beginning. Containing five acres and five one-hundredths of an acre be the same more or less." 20

That the said Alfred Mills and John H. Lidgerwood, who were surviving executors and trustees under the last will and testament of Stephen Vail, deceased, have both departed this life, the said John H. Lidgerwood having predeceased the said Alfred Mills and the latter having left a last will and testament wherein and whereby he did appoint Alfred Elmer Mills and Edward K. Mills the 30 executors thereof, both of whom qualified, and by deed of assignment bearing date the sixteenth day of April, in the year nineteen hundred and fourteen, and recorded in the Morris County Clerk's Office on the twenty-first day of April, in the year nineteen hundred and fourteen, in Book 31 of Assignments of Mortgages on pages 301, &c., did transfer and assign the aforesaid mortgage, unto Joseph Hinchman, who had been duly appointed and qualified as trustee under the last will and testament of Stephen Vail, deceased, and who as 40

Petition of National Iron Bank for Order to Sell.

such trustee by Deed of Assignment bearing date the sixteenth day of April, in the year nineteen hundred and fourteen, and recorded on the twenty-first day of April, in the year nineteen hundred and fourteen, in the office of the Clerk of the County of Morris, in Book No. 31 of Assignments of Mortgages, on pages 303, &c., did transfer and assign
10 the said mortgage to one William J. O'Connor, who now holds the same and claims to be the owner thereof.

3. That in pursuance of the authority contained in the said order the said Frederic V. Pitney, receiver as aforesaid, did, on the fourteenth day of February, in the year nineteen hundred and thirteen, borrow of your petitioner, and your petitioner loaned him, the sum of three thousand dollars and in order to secure the same the said receiver did execute and issue his certificate of indebtedness as such receiver, bearing date the day and year last aforesaid, for the amount of said loan in and by which said certificate of indebtedness he did acknowledge that he received from
20 your petitioner the said sum of three thousand dollars to be used in the administration of his trust as such receiver, under the directions of this Court, and did therein and thereby, as such receiver, promise to pay the said sum of three thousand dollars to your petitioner, or order, within twelve months of the date of the said certificate of indebtedness, with interest thereon from the date thereof at the rate of six per centum per annum, payable every three months, out of the property of the said the New Jersey and Pennsylvania Railroad Company, or the proceeds thereof, prior to
30 any other debts or demands of any kind or character whatsoever, and he did in and by his said
40 certificate of indebtedness certify that the same

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was issued under the authority of, and pursuant to, the aforesaid mentioned order of this Court, and that the amount named in said certificate was by the terms of said order of this Court made a first lien and charge against the entire property of the said the New Jersey and Pennsylvania Railroad Company and the proceeds thereof, prior to any other mortgage, judgment, lien or claim whatsoever, except as aforesaid mentioned, a copy of which said certificate of indebtedness is hereto annexed and marked Schedule "B" and is hereby particularly referred to and made a part hereof. 10

4. That afterwards, to wit, on the thirteenth day of June, in the year nineteen hundred and thirteen, the said Frederick V. Pitney as such receiver, did borrow from your petitioner, and your petitioner loaned him an additional sum of four thousand dollars for the purposes mentioned in the aforesaid order, and in order to secure the said last mentioned sum of four thousand dollars the said Frederic V. Pitney, as such receiver, executed and delivered to your petitioner a certain other certificate of indebtedness bearing date the day and year last aforesaid, wherein and whereby he did certify that as such receiver he did on the date and year last aforesaid receive from your petitioner the sum of four thousand dollars, to be used in the administration of his trust as such receiver under the direction of this Court and did therein and thereby promise as such receiver to pay the said sum of four thousand dollars to your petitioner or order, within twelve months from the date of the said last mentioned certificate of indebtedness, with interest from the date thereof at the rate of six per centum per annum, payable every three months, out of the property of the New Jersey and Pennsylvania Railroad Com- 20 30 40

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pany or the proceeds thereof, prior to any other debt or demand of any kind or character whatsoever, except the aforesaid certificate of three thousand dollars then held by your petitioner for money loaned to the said receiver on the fourteenth day of February, in the year nineteen hundred and thirteen, and he did in and by the said
10 certificate of indebtedness for four thousand dollars further certify that the same was issued under the authority of and in pursuance of the aforesaid mentioned order and that said order still remained unrevoked and unaltered and that the amount named in the said certificate for four thousand dollars and the amount named in the former certificate, by the terms of said order of this
20 Court, were made first liens and charges against the entire property of the defendant, the New Jersey & Pennsylvania Railroad Company, and the proceeds thereof, prior to any other mortgage, judgment or claim whatsoever, except as aforesaid mentioned, a copy of which certificate of indebtedness, bearing date the thirteenth day of June, in the year nineteen hundred and thirteen, is hereunto annexed and marked Schedule "C" and is hereby particularly referred to as a part hereof.

30 5. That the said two certificates of indebtedness above set forth made by the said Frederic V. Pitney, receiver of the New Jersey & Pennsylvania Railroad Company, are now in the possession of and owned by your petitioner ready to be produced and proved when and where this Honorable Court may direct.

40 6. That on the fourth day of May, in the year nineteen hundred, the Speedwell Lake Railroad Company executed to one Robert D. Foote, a certain mortgage bearing date on the day and year last aforesaid and recorded in the Morris

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County Clerk's Office on the ninth day of May, in the year nineteen hundred, in Book H-5 of Mortgages on pages 540, &c., to secure the payment of the sum of five thousand nine hundred and eighteen dollars and ninety-three cents (\$5,918.93) in one year from the date thereof with interest thereon at the rate of six per centum per annum, covering certain personal and real property, including a portion of the land and real estate now owned by the New Jersey and Pennsylvania Railroad Company, and in said mortgage described as follows: 10

All those four lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Morris, and in the Town of Morristown, in the County of Morris and State of New Jersey. 20

The First Tract is situate in the Township of Morris, and is the same described in a deed of conveyance from Julia B. Sherman and husband to the said Speedwell Lake Railroad Company bearing date the twenty-seventh day of August, eighteen hundred and ninety-eight and recorded in the Morris County Clerk's Office in Book T-15 of Deeds on pages 62, &c., and in said deed described as follows:

"Beginning at a point in the center line of the route of Speedwell Lake Railroad, as shown on a map of said route, filed together with a description of the same in the office of Secretary of State of the State of New Jersey on the twelfth day of November, eighteen hundred and ninety-seven, said point being south eighty-three degrees and fifteen minutes east twelve hundred and forty-two and fifty-five one-hundredths feet from the beginning point of said railroad, as shown on said map and being also a point in the division line of properties of 30 40

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said Julia B. Sherman and the estate of J. Boyd Headley, deceased, being in the supposed first line of the third tract of land described in a deed of conveyance from Frederick Smith and wife to Gordon Burnham, bearing date the twenty-fifth day of December, eighteen hundred and fifty-two, and recorded in the Morris County Clerk's Office in Book A-5 of Deeds on pages 499, &c., and being a point south ten degrees and ten minutes east as the compass now reads about two hundred and eighty-seven and one-tenth feet from a stone monument set in the ground near the southerly side of the Lake Road to mark the second corner of said third tract and from said beginning point running (1) north ten degrees and ten minutes west twenty-six and nine one hundredths feet; (2) south eighty-three degrees and fifteen minutes east seven hundred and seventy-six and ninety-seven hundredths feet to the southerly bank of the Whippany River; thence (3) along the southerly bank of the Whippany River on a course of about south fifty-one degrees west sixty-nine and eight-tenths feet; thence (4) parallel to the second line hereof north eighty-three degrees and fifteen minutes west seven hundred and thirteen and ninety-three hundredths feet; thence (5) north ten degrees and ten minutes west twenty-six and nine one-hundredths feet to the place of beginning.

Being the same tract of land shown upon the map hereto annexed and hereby made a part hereof."

The Second Tract is situate in the Township of Morris and is the same described in a deed of award made by George H. Ross, Guy Minton and Charles Y. Swan, Commissioners to the said Speedwell Lake Railroad Company, bearing date the second day of April, nineteen hundred and ninety-eight, filed in the Morris County Clerk's Office and recorded in Book A of Awards on pages 167, &c., and in said deed described as follows:

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"Beginning at a point in the center line of the
 route of the Speedwell Lake Railroad, as shown on
 a map of said route, filed together with a descrip-
 tion of the same, in the office of the Secretary of
 State on the twelfth day of November, eighteen
 hundred and ninety-seven, said point being south
 eighty-three degrees and fifteen minutes east nine-
 teen hundred and thirty-four and five-tenths feet
 from the beginning point of said railroad, as shown
 on said map, and being also a point in the Whip-
 pany River in the eighth line of lot number five
 shown on map of Lake Grove made by Thomas
 Hughes, surveyor (now on file in the Morris County
 Clerk's Office), and described in a deed of convey-
 ance from the Mutual Life Insurance Company of
 New York to Elsie Brown Lord, bearing date the
 twenty-first day of June, eighteen hundred and
 ninety-two, and recorded in the Morris County
 Clerk's Office in Book R-13 of Deeds, on pages 565,
 &c., and running thence (1) along the eighth course
 of lot number five reversed and as the needle now
 reads in February, eighteen hundred and ninety-
 eight, south fifty-three degrees and fifty minutes
 west forty-six and 63/100 feet to the eighth corner
 of lot number five; thence (2) south seventy degrees
 and twenty minutes west sixty-four and thirty-four
 hundredths feet; thence (3) south eighty-three de-
 grees and fifteen minutes east three hundred and
 seven and five-tenths feet; thence (4) south six de-
 grees and forty-five minutes west ten feet; thence
 (5) south eighty-three degrees and fifteen.....
 east two hundred and ten feet; thence (6) north
 six degrees and forty-five minutes east ten feet;
 thence (7) south eighty-three degrees and fifteen
 minutes east one hundred and twelve and 15/100
 feet to the middle of the Lake Road; thence (8)
 along the center line of the Lake Road one hundred

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Petition of National Iron Bank for Order to Sell.

and fifty and six-tenths feet more or less; thence (9) north eighty-three degrees fifteen minutes west sixty and 56/100 feet; thence (10) north six degrees and forty-five minutes east ten feet; thence (11) north eighty-three degrees and fifteen minutes west one hundred and fifty feet; thence (12) south six
 10 degrees and forty-five minutes west ten feet; thence (13) north eighty-three degrees and fifteen minutes west two hundred and fifteen and five-tenths to a point in the Whippany River where the thirteenth line of the herein described tract intersects the eighth line of lot number five hereinbefore referred to; thence (14) along said eighth line reversed, and as the needle now points in February, eighteen hundred and ninety-eight, south fifty-three degrees and fifty minutes west fifty-nine feet to the place of be-
 20 ginning. Being the same tract of land shown upon the map hereto annexed and hereby made a part of this report and award."

The Third Tract is situate partly in the Township of Morris and partly in the Town of Morristown, and is the same described in a deed of award made by George H. Ross, Guy Minton and Charles Y. Swan, Commissioners to the said Speedwell Lake Railroad Company, bearing date the fourteenth day of April, eighteen hundred and ninety-eight, filed in the Morris County Clerk's Office and recorded in Book A of Awards on pages 180, &c., and in said deed is described as follows: "Begin-
 30 ning at a point in the center line of the route of the Speedwell Lake Railroad, as shown on a map of said route, filed together with a description of the same in the office of the Secretary of State of the State of New Jersey on the twelfth day of November, eighteen hundred and ninety-seven, said point being south eighty-three degrees and fifteen minutes east twenty-four hundred and sixteen and fif-
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ten one-hundredths feet from the beginning point
 of said railroad, as shown on said map and being
 a point in the middle of the Lake Road distant
 about three hundred and thirty-three and five-
 hundredths feet, measured in a southeasterly di-
 rection along the middle of the Lake Road from a
 spike driven in the middle of the south end of the
 Lake Road bridge over Speedwell Lake and as
 shown on the map hereto annexed, running thence
 (1) along the middle of said Lake Road in a south-
 erly direction sixty-eight and nine-tenths feet;
 thence (2) south eighty-three degrees and fifteen
 minutes east one hundred and twenty-six and six-
 tenths feet; thence (3) deflecting to the south on
 the arc of a circle whose radius is nine hundred
 and ninety-two and fourteen hundredths feet, a
 distance of three hundred and eighty-two and
 ninety-seven hundredths feet; thence (4) south
 sixty-one degrees and fifteen minutes east four
 hundred and twenty-four and four-tenths feet to a
 point in the division line of lands of which the
 herein described tract is a part and lands of late
 Augustus W. Cutler, thence (5) north thirty-one
 degrees and twenty minutes east and running
 through a clump of chestnut trees designated as a
 corner of lands of said Cutler thirty-one and sixty-
 five one-hundredths feet to the edge of Speedwell
 Lake; thence (6) along the edge of Speedwell Lake
 in a general northwesterly direction three hundred
 and ninety-seven feet to a point distant, measuring
 on a course of south sixty-one degrees and fifteen
 minutes east fifty-nine feet from the extremity of
 a radial line of a circle, the radius of which is ten
 hundred and ninety-two and fourteen hundredths
 feet and the center of which is coincident with the
 center of the above mentioned circle, having a
 radius of nine hundred and ninety-two and four-

Petition of National Iron Bank for Order to Sell.

10 teen hundredths feet as above stated; thence (7)
 north sixty-one degrees and fifteen minutes west
 fifty-nine feet to the extremity of said radial line;
 thence (8) deflecting to the south on the arc of a
 circle whose radius is ten hundred and ninety-two
 and fourteen hundredths feet, a distance of forty-
 20 five feet to the edge of Speedwell Lake; thence
 (9) along the edge of Speedwell Lake in a general
 westerly direction, a distance of about one hun-
 dred and ninety-five feet to a point very near the
 base of a stump; thence (10) deflecting to the
 south on the arc of a circle whose radius is ten
 hundred and ninety-two and fourteen hundredths
 feet, a distance of one hundred and eighty-three
 feet, more or less, to the tangent point of said
 curve; thence (11) north eighty-three degrees and
 20 fifteen minutes west two hundred and fifty and six-
 tenths feet to the middle of the Lake Road; thence
 (12) along the middle of the Lake Road in a south-
 easterly direction ninety-one and thirty-five hun-
 dredths feet to the place of beginning. Being a
 part of two tracts of land described in a deed of
 conveyance from Stephen H. Condict and wife to
 Abram L. Cross, bearing date the thirteenth day of
 May, eighteen hundred and eighty-seven and re-
 corded in the Morris County Clerk's Office in Book
 30 A-12 of Deeds on pages 553, &c. Being the same
 tract of land shown on the map hereto annexed and
 hereby made a part of this report and award."

40 The Fourth Tract is situate in the Town of Mor-
 ristown, and is the same described in a deed of con-
 veyance made by said Robert D. Foote and wife to
 the said Speedwell Lake Railroad Company, bear-
 ing date the fourth day of May, nineteen hundred,
 intended to be recorded simultaneously herewith in
 the Morris County Clerk's Office and in said deed is
 described as follows:

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“Beginning at a stake driven in the westerly side
 line of Speedwell avenue, said stake being one hun-
 dred feet distant, measured in a northerly direction
 along the westerly side line of said avenue from a
 point where the southerly line of Speedwell Iron
 Works property conveyed to the said Robert D.
 Foote by Alfred Mills and others, executors of 10
 Stephen Vail by deed dated October 12, 1897,
 crosses the westerly side line of said avenue; thence
 (1) along the westerly side line of said avenue in a
 southerly direction one hundred feet; thence (2)
 north seventy-four degrees and twenty-five minutes
 west along line of lands of the estate of Stephen
 Vail, deceased, about four hundred and forty feet
 to a corner; thence (3) north sixty-one degrees west
 along lands formerly owned by Augustus W. Cutler,
 deceased, about six hundred and seventy-three and 20
 eighty-six hundredths feet to another corner of said
 Cutler’s land; thence (4) north twenty-seven de-
 grees and seven minutes east sixty feet to a stake;
 thence in an easterly direction and in a straight
 line to the place of beginning. Being part of the
 property conveyed to the said Robert D. Foote by
 Alfred Mills and other executors of Stephen Vail
 by deed dated October 12, 1897, recorded in the
 Clerk’s Office of the County of Morris in Book N.
 15 of Deeds for said county on pages 458, &c.,” 30
 which said last mentioned mortgage was assigned
 by the said Robert D. Foote to George E. Fisher
 by deed of assignment, bearing date the eighteenth
 day of September, nineteen hundred and one and
 recorded in said Clerk’s Office on the twenty-third
 day of September, nineteen hundred and one in
 Book No. 21 of Assignments of Mortgages on pages
 86, &c., by virtue of which said mortgage the said
 George E. Fisher claims to have a lien upon the
 property therein described, but your petitioner 40

Petition of National Iron Bank for Order to Sell.

charges that the said last mentioned mortgage is subject and subsequent to the lien of your petitioner's two said certificates of indebtedness and that the lien of your petitioner is prior to the lien of said mortgage.

10 7. That the said the New Jersey & Pennsylvania Railroad Company, on or about the first day of June, in the year nineteen hundred and seven, did execute a mortgage to the Corporation Trust Company as trustee to secure bond holders of a series of bonds not exceeding two hundred thousand dollars, on the railway and franchises of the said defendant railroad company, which last mentioned mortgage was recorded in the Morris County Clerk's Office on the fifteenth day of June in the year nineteen hundred and seven in Book Z-5 of
20 Mortgages, pages 1, &c., by virtue whereof the said the Corporation Trust Company, trustee, claims to have some lien upon the property, real and personal, of the said the New Jersey & Pennsylvania Railroad Company, but your petitioner charges that the said last mentioned mortgage is subject and subsequent to the lien of your petitioner's said two certificates of indebtedness as in the said order provided and that your petitioner's lien is prior to the lien of said last mentioned mortgage.

30 8. That afterwards, to wit, on or about the first day of November, in the year nineteen hundred and twelve, the said the New Jersey and Pennsylvania Railroad Company did execute a certain other mortgage on the said railway and franchises to the Commercial Trust Company of New Jersey, trustee, bearing date on the day and year last aforesaid, and recorded in the office of the Clerk of the County of Morris, in the State of New Jersey, on the first
40 day of November, in the year nineteen hundred and twelve, in Book V-6 of Mortgages, pages 544, &c.,

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to secure bondholders of a series of bonds not exceeding five hundred thousand dollars, with interest, by virtue of which said last mentioned mortgage the said the Commercial Trust Company of New Jersey, trustee, may claim to have some lien upon the property, real and personal, of the said the New Jersey & Pennsylvania Railroad Company, but your petitioner charges that no bonds were issued under the said last mentioned mortgage, and that if a lien at all is subject and subsequent to the lien of your petitioner's said two certificates of indebtedness, and that the lien of your petitioner is prior thereto. 10

9. That on the sixth day of November, in the year nineteen hundred and twelve, as your petitioner has been informed, one George M. Frech recovered a judgment against the said the New Jersey and Pennsylvania Railroad Company in the Supreme Court of the State of New Jersey for the sum of four thousand and twenty dollars and ninety-eight cents, or some other sum, which said judgment, was assigned by the said George M. Frech to the complainant, William H. Jeffers, by deed of assignment, bearing date December twenty-second, nineteen hundred and twelve, and recorded in the office of the Clerk of the Supreme Court of New Jersey, by virtue of which judgment the said William H. Jeffers claims to have some claim upon the property, real and personal, of the said the New Jersey & Pennsylvania Railroad Company, but your petitioner charges that the said judgment is subject to the two aforesaid certificates of indebtedness held by your petitioner and if a lien at all on the said premises the lien of your petitioner's said two certificates of indebtedness is prior thereto. 20 30 40

Petition of National Iron Bank for Order to Sell.

10. That there is now due unto your petitioner, the principal sum of seven thousand dollars being the aggregate amount of the principal sums secured by the said two certificates of indebtedness, together with interest thereon at the rate of six per per centum per annum from the first day of October, in the year nineteen hundred and thirteen, no part of the principal having ever been paid and no interest having been paid since that time, although your petitioner has demanded payment of the said principal and interest of the said Frederic V. Pitney, receiver as aforesaid.

11. That the stockholders of the said the New Jersey & Pennsylvania Railroad Company are as follows:

STOCKHOLDERS.	POST OFFICE ADDRESS.
Charles N. Flint.....	63 Wall Street, New York
Daniel D. Thompson,	234 E. 31st Street, New York
John S. Van Horne.....	155 Broadway, New York
William F. Reeves.....	155 Broadway, New York
Sidney Smith.....	27 William Street, New York
P. Latourette.....	Whitehouse Station, New Jersey
George E. Fisher.....	63 Wall Street, New York
Annie B. Spencer,	
	Dacona Hall, 620 W. 122d Street, New York

30 That the bondholders of said railroad company are as follows:

BONDHOLDERS.	POST OFFICE ADDRESS.
Robert M. Moore,	
	Commercial Trust Company of New York,
	Broadway & 40th Street, New York
Edward H. Wilson,	
	First Nat'l Bank Building, cor. Broad-
	way & Wall Street, New York
Benjamin G. Paskus....	128 Broadway, New York
40 James N. Pidcock, Jr....	Whitehouse Station, N. J.

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Commercial Trust Company of the
City of New York,

Broadway & 40th Street, New York

John F. Wallace.....10 Bridge Street, New York

Miss Mary M. Everon,

35 Clendenny Avenue, Jersey City, N. J.

Miss Mary A. Herrich,

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Little Neck, Long Island, New York

Ezra A. Little..Eastport, Long Island, New York

That the mortgage creditors of said railroad company are as follows:

MORTGAGE CREDITORS POST OFFICE ADDRESS.
Corporation Trust Company, Trustee,

Jersey City, N. J.

Commercial Trust Company of

New Jersey, Trustee.....Jersey City, N. J.

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George E. Fisher.....63 Wall Street, New York

William J. O'Connor,

Waterford, Saratoga Co., New York

JUDGMENT CREDITOR. POST OFFICE ADDRESS.

William H. Jeffers,

128 Broadway, New York City, New York

12. That the said two certificates of indebtedness for three thousand dollars and four thousand dollars, respectively, together with lawful interest thereon from the first day of October in the year nineteen hundred and thirteen, are a first lien on the property, real and personal, of the defendant, the New Jersey and Pennsylvania Railroad Company, in preference to any mortgage, judgment or other lien or claim thereon except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees under the last will and testament of Stephen Vail, deceased, and above set forth, and that your petitioner is entitled to the order of this Court

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Petition of National Iron Bank for Order to Sell.

directing the sale of the property, real and personal, of the defendant, the New Jersey and Pennsylvania Railroad Company, to pay and satisfy the amount due on said certificates.

Wherefore, your petitioner humbly prays that an order be made by this Court for the sale of its railway line running from Watnong in the Township and County of Morris, New Jersey, through the Counties of Morris, Somerset and Hunterdon in the State of New Jersey, to Whitehouse Station in the said County of Hunterdon and any other property in the hands of the said receiver, and for the sale and application of any property of the said the New Jersey and Pennsylvania Railroad Company liable therefor, for the purpose of providing for the payment of the amount due to your petitioner for the principal and interest of the aforesaid two certificates of indebtedness, in preference to any mortgage, judgment or other liens or claims thereon except the aforesaid mortgage given by Charles D. Haines to the executors and trustees of Stephen Vail, deceased, and that your petitioner may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity.

And your petitioner will ever pray, &c.,

VREELAND & WILSON,
Solicitors for and of counsel
with the National Iron
Bank of Morristown, New
Jersey, Petitioner.

Petition of National Iron Bank for Order to Sell.

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

Robert D. Foote, of full age being duly sworn according to law on his oath says that he is President of the National Iron Bank, of Morristown, New Jersey, the petitioner above named, and that the matters, facts and things set forth in the foregoing petition are true according to the best of his knowledge, information and belief.

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Deponent further says that as such President he personally conducted negotiations with Frederic V. Pitney, Receiver of the New Jersey and Pennsylvania Railroad Compnay, for the loans of three thousand dollars and four thousand dollars respectively, mentioned in the foregoing petition, and that on the fourteenth day of February, in the year nineteen hundred and thirteen, the said bank loaned to the said Receiver the full sum of three thousand dollars and in order to secure the same the said Receiver executed and delivered to said bank his certificate of indebtedness bearing date on that day for said amount, payable within twelve months of the date thereof, with interest thereon from the date thereof at the rate of six per centum per annum, a true copy whereof is annexed to the said petition and marked Schedule "B."

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Deponent further says that on the thirteenth day of June, in the year nineteen hundred and thirteen, said bank loaned the said Receiver the additional sum of four thousand dollars to secure which with interest thereon at the rate of six per centum per annum, the said Receiver executed and delivered to the said bank the certificate of indebtedness mentioned in said petition bearing date on the said thirteenth day of June for four thousand dollars payable within twelve months from the date thereof with interest from the date thereof at the rate of

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Petition of National Iron Bank for Order to Sell.

six per centum per annum, a true copy whereof is attached to said petition and marked Schedule "C."

That both of said certificates of indebtedness are now in the possession of and owned by the said the National Iron Bank, of Morristown, New Jersey.

- 10 Deponent further says that nothing whatever has been paid on the principal of the said two certificates of indebtedness, or either of them, but that the whole amount thereof still remains due and owing to said bank, together with interest thereon from the first day of October in the year nineteen hundred and thirteen, to which time the interest was paid but none was paid thereafter.

ROBERT D. FOOTE.

- 20 Sworn and subscribed before me,
this eleventh day of November,
A. D. 1914.

ALFRED ELMER MILLS,
Master in Chancery of New Jersey.

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Petition of National Iron Bank for Order to Sell.

SCHEDULE A.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill, Etc.* 10*Order on
Petition Filed
January 14,
1913.*

An order to show cause having heretofore been made in the above entitled cause on filing the petition of the receiver herein on the fourteenth day of January, nineteen hundred and thirteen, and proof by affidavit of the mailing of the notice of said order to the creditors, bondholders and mortgagees of the defendant corporation as required by said order, and proof of service of copies of said order made as required by the said order, having been presented to the court and filed, and the court having heard Corwin Howell, Esquire, representing Pitney, Hardin & Skinner, for the said receiver and also for the said complainant as creditor, and Edward K. Mills, Esquire, for Alfred Mills, surviving executor and trustee of Stephen Vail, deceased, mortgagee, and the court being of opinion that under the circumstances of this case the receiver should be given authority to raise sufficient funds to enable the said receiver to properly protect the property of the said railroad company and to operate the railroad by the issue of receiver's certificates of indebtedness to be a first lien on the property, real and personal, of the said

Petition of National Iron Bank for Order to Sell.

10 railroad company in preference to any mortgage, judgment or other liens or claims thereon, except the mortgage of the said Alfred Mills, surviving executor and trustee of Stephen Vail, deceased, and it appearing that there are no preferred claims against the defendant corporation remaining
10 unpaid to this date; and the court being of opinion there being no objection thereto that the bill of the Pennsylvania Coal & Coke Corporation amounting to the sum of three hundred and eighty-two dollars and thirty-seven cents for coal furnished to the defendant corporation, should be paid in full by the said receiver without delay;

It is on this twenty-eighth day of January, nineteen hundred and thirteen, on motion of Pitney, Hardin & Skinner, solicitors of the said receiver,
20 ORDERED that the said receiver have authority to borrow money by the issue of receiver's certificates of indebtedness maturing not later than twelve months from their date, and not at any one time exceeding in amount seven thousand dollars, and carrying interest at not exceeding the legal rate, which certificates of indebtedness shall be a first lien on the property, real and personal, of the said defendant railroad company, in preference to
30 any mortgage, judgment or other liens or claims thereon, except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the clerk's office of the County of Morris on the fifth day of May, nineteen hundred, securing the bond of even date of the said Charles D. Haines, conditioned for the payment of seventy-five hundred dollars in two years from date, with interest at five per cent. on the land described
40 in said mortgage comprising five and five hundredths acres in the town of Morristown, and sub-

Petition of National Iron Bank for Order to Sell.

sequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company.

And it is further ORDERED that the bill of the Pennsylvania Coal & Coke Corporation amounting to the sum of three hundred and eighty-two dollars and thirty-seven cents for coal furnished to the defendant corporation be forthwith paid in full by the said receiver from any funds in his hands available for that purpose. 10

E. R. WALKER,
C.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

A true copy. 20

SAM K. ROBBINS,
Clerk.

SCHEDULE B.

Whereas the Court of Chancery of the State of New Jersey did, by its order bearing date the twenty-eighth day of January in the year of our Lord one thousand nine hundred and thirteen, in a cause wherein William H. Jeffers was complainant and the New Jersey and Pennsylvania Railroad Company was defendant, among other things order that the receiver heretofore appointed in said cause have authority to borrow money by the issue of receiver's certificates of indebtedness, maturing not later than twelve months from their date, and not at one time to exceed in amount seven thousand dollars, and carrying interest at not exceeding the legal rate, which certificates of indebtedness shall 30 40

Petition of National Iron Bank for Order to Sell.

be a first lien on the property, real and personal of said defendant railroad company, in preference to any mortgage, judgment, or other liens or claims thereon, except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the clerk's office of the County of Morris on the fifth day of May, nineteen hundred, securing the bond of even date of the said Charles D. Haines, conditioned for the payment of seventy-five hundred dollars in two years from date, with interest at five per cent., on the land described in said mortgage, comprising five and 5/100 acres, in the town of Morristown, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company.

Now I, FREDERIC V. PITNEY, receiver of the New Jersey and Pennsylvania Railroad Company, heretofore appointed by the Chancellor in the aforesaid cause, hereby certify and make known that I, as such receiver as aforesaid, have received from the National Iron Bank of Morristown, New Jersey, the sum of three thousand dollars (\$3,000) to be used in the administration of my trust as such receiver, under the directions of the said Court of Chancery of New Jersey, and which as such receiver I promise to pay to the National Iron Bank of Morristown, or order, within twelve months from this date with interest from date at the rate of six per cent. per annum payable every three months out of the property of the said New Jersey and Pennsylvania Railroad Company, or the proceeds thereof, prior to any other debts or demands of any kind or character whatsoever.

And I further certify that this certificate is issued under the authority of and pursuant to the aforesaid mentioned order of the Court of Chan-

Petition of National Iron Bank for Order to Sell.

cery, and that the amount named in this certificate is by the terms of said order of said court made a first lien and charge against the entire property of the said New Jersey and Pennsylvania Railroad Company and the proceeds thereof prior to any other mortgage, judgment, lien or claim whatsoever except as aforesaid mentioned.

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IN WITNESS WHEREOF, I, Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company, have set my hand by virtue of said order this fourteenth day of February, in the year of our Lord one thousand nine hundred and thirteen.

FREDERIC V. PITNEY,

Receiver, New Jersey &

Pennsylvania R. R. Co.

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SCHEDULE C.

Whereas, the Court of Chancery of the State of New Jersey did, by its order bearing date the twenty-eighth day of January in the year of our Lord one thousand nine hundred and thirteen, in a cause wherein William H. Jeffers was complainant and the New Jersey and Pennsylvania Railroad was defendant, among other things order that the receiver heretofore appointed in said cause have authority to borrow money by the issue of receiver's certificates of indebtedness, maturing not later than twelve months from their date, and not at one time to exceed in amount seven thousand dollars, and carrying interest at not exceeding the legal rate; which certificates of indebtedness shall be a first lien on the property, real and personal of said defendant railroad company, in preference to any mortgage, judgment, or other liens or claims

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Petition of National Iron Bank for Order to Sell.

thereon, except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the clerk's office of the County of Morris on the fifth day of May, nineteen hundred, securing the bond of even date of the said
10 Charles D. Haines, conditioned for the payment of seventy-five hundred dollars in two years from date, with interest at five per cent., on the land described in said mortgage, comprising five and 5/100 acres, in the town of Morristown, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company; and

Whereas, Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company, heretofore appointed by the Chancellor in said cause,
20 has as such receiver only borrowed the sum of three thousand dollars, and which sum still remains due and unpaid; and

Whereas, it is necessary that the said receiver should borrow an additional sum of four thousand dollars for the purposes mentioned in the aforesaid order:

Now, I, Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company heretofore appointed by the Chancellor in the aforesaid cause, hereby certify and make known that I as
30 such receiver, have this day received from the National Iron Bank, of Morristown, the sum of four thousand dollars, to be used in the administration of my trust as such receiver, under the direction of the said Court of Chancery of New Jersey, and which as such receiver I promise to pay to the National Iron Bank, of Morristown, or order, within twelve months from this date, with interest
40 from date, at the rate of six (6%) per cent. per annum payable every three months out of the prop-

Petition of National Iron Bank for Order to Sell.

erty of the said New Jersey and Pennsylvania Railroad Company, or the proceeds thereof prior to any other debt or demand of any kind or character whatsoever, except the certificate of three thousand dollars, now held by the National Iron Bank, of Morristown, for money loaned me as such receiver on the fourteenth day of February, nineteen hundred and thirteen. 10

And I further certify that this certificate is issued under the authority of and in pursuance of the aforesaid mentioned order, and which order still remains unrevoked and unaltered, and that the amount named in this and the former certificate by the terms of said order of the said court, are made first liens and charges against the entire property of the New Jersey and Pennsylvania Railroad Company, and the proceeds thereof prior to any other mortgage, judgment, lien or claim whatsoever, except as aforesaid mentioned. 20

IN WITNESS WHEREOF, I, Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company, have set my hand by virtue of the said order, this thirteenth day of June, in the year of our Lord one thousand nine hundred and thirteen.

FREDERIC V. PITNEY, 30
*Receiver, New Jersey &
 Pennsylvania R. R. Co.*

Order to Show Cause.

Order to Show Cause.

(Filed November 17, 1914).

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,
Defendant.

On Bill, Etc.

*Order to
Show Cause
on Petition of
the National
Iron Bank, of
Morristown,
New Jersey.*

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Upon reading and filing the duly verified petition of the National Iron Bank, of Morristown, New Jersey, setting out the order of this court made on the twentieth day of January, nineteen hundred and thirteen, authorizing Frederic V. Pitney, the receiver of the defendant, to borrow money by the issuing of receiver's certificates of indebtedness to mature not later than twelve months from their date and not at any one time to exceed in amount seven thousand dollars and to carry interest at not exceeding the legal rate, which certificates of indebtedness by the terms of said order should be a first lien on the property, real and personal, of the said defendant railroad company, in preference to any mortgage, judgment or other lien or claim thereon, except only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees under the last will and testament of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred and recorded in the clerk's office of the County of Morris in the

Order to Show Cause.

State of New Jersey, on the fifth day of May, nineteen hundred, in Book H-5 of Mortgages, page 524, etc., securing the bond of even date therewith of the said Charles D. Haines conditioned for the payment of seven thousand five hundred dollars in two years after the date thereof, with interest at the rate of five per centum per annum, on the land described in said mortgage and petition, comprising five and five hundredths acres of land situate in the town of Morristown, in the County of Morris and State of New Jersey, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company. 10

And it further appearing by said petition that in pursuance of the authority contained in said order the said Frederic V. Pitney, receiver as aforesaid, did on the fourteenth day of February, in the year nineteen hundred and thirteen, borrow of the National Iron Bank, of Morristown, New Jersey, the sum of three thousand dollars and did secure said loan by his certificate of indebtedness as such receiver, bearing date the day and year last aforesaid for the amount thereof, in and by which said certificate of indebtedness he did acknowledge that he received from the said National Iron Bank, of Morristown, New Jersey, the said sum of three thousand dollars to be used in the administration of his trust as such receiver under the directions of this court and did as such receiver in and by said certificate of indebtedness promise to pay the said sum of three thousand dollars to the said the National Iron Bank, of Morristown, New Jersey, or order within twelve months from the date thereof, with interest thereon from the date thereof at the rate of six per centum per annum, payable every three months out of the property of the said the New Jersey and Pennsylvania Railroad Company, or the proceeds thereof, prior to any other debts 20 30 40

Order to Show Cause.

or demands of any kind or character whatsoever, and did in and by the said certificate of indebtedness certify that the same was issued under the authority of and pursuant to the aforesaid mentioned order of this court and that the amount named in such certificate was by the terms of said
10 order made a first lien and charge against the New Jersey and Pennsylvania Railroad Company and the proceeds thereof prior to any other debt or claim whatsoever except as aforesaid mentioned.

And it further appearing by said petition that afterwards, and on the thirteenth day of June, in the year nineteen hundred and thirteen, the said Frederic V. Pitney, as such receiver did borrow from the said the National Iron Bank, of Morristown, New Jersey, an additional sum of four
20 thousand dollars for the purposes mentioned in the aforesaid order and in order to secure the said last mentioned sum of four thousand dollars did as such receiver execute and deliver to the said the National Iron Bank, of Morristown, New Jersey, a certain other certificate of indebtedness bearing date the day and year last aforesaid, wherein and whereby he did certify that as such receiver, on the day and year last aforesaid he received from the said the National Iron Bank, of Morristown, New Jersey,
30 the sum of four thousand dollars to be used in the administration of his trust as such receiver under the directions of this court, and did in and by the said last mentioned certificate of indebtedness promise as such receiver to pay the said sum of four thousand dollars to the National Iron Bank, of Morristown, New Jersey, or order within twelve months from the date of the said last mentioned certificate of indebtedness with interest from the date thereof at six per centum per annum, payable
40 every three months out of the property of the said the New Jersey and Pennsylvania Railroad Company, and the proceeds thereof, prior to any other

Order to Show Cause.

debt or demand of any kind or character whatsoever except the aforesaid certificate of indebtedness of three thousand dollars, held by the National Iron Bank, of Morristown, New Jersey, for money loaned to the said receiver the fourteenth day of February, in the year nineteen hundred and thirteen, and did in and by the said certificate of indebtedness for four thousand dollars further certify 10
that the same was issued under the authority and in pursuance of the aforesaid order, and that said order then remained unrevoked and unaltered, and that the amount named in said certificate of indebtedness, by the terms of the said order of this court was made a first lien and charge against the entire property of defendant, the New Jersey and Pennsylvania Railroad Company, and the proceeds thereof prior to any other mortgage, judgment or 20
claim whatsoever, except as aforesaid mentioned.

And it further appearing by said petition that the said two certificates of indebtedness are now in the possession of and owned by the said the National Iron Bank, of Morristown, New Jersey, and that the whole amount thereof with interest thereon from the first day of October, nineteen hundred and thirteen, remained due and unpaid.

And it further appearing that the property of the said defendant railroad company is subject to certain mortgages, one held by the Corporation Trust Company, trustee, to secure bondholders of the series of bonds not exceeding two hundred thousand dollars, another held by the Commercial Trust Company of New Jersey, trustee, to secure bondholders of a series of bonds not exceeding five hundred thousand dollars; and another held by George E. Fisher for five thousand nine hundred and eighteen dollars and ninety-three cents (\$5,918.93) and interest covering a portion of the lands of the New Jersey and Pennsylvania Railroad Company and 30
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Order to Show Cause.

described in said petition together with certain personal property of said railroad company; and that William H. Jeffers, the complainant holds by assignment a judgment recovered by George M. Frech in the New Jersey Supreme Court against the said the New Jersey and Pennsylvania Railroad Company on the sixth day of November, nineteen hundred and twelve, for the sum of four thousand and twenty dollars and ninety-eight cents, and praying for the sale of any property in the hands of said receiver, and for the sale and application of any property of the said the New Jersey and Pennsylvania Railroad Company liable therefor, for the purpose of providing for the payment of the amount due to the said the National Iron Bank, of Morristown, New Jersey, for the principal and interest of the aforesaid two certificates of indebtedness, and for such other and further relief in the premises as the nature of the case might require and as might be agreeable to equity.

It is, on the seventeenth day of November, in the year nineteen hundred and fourteen, on motion of Vreeland and Wilson, of counsel with the National Iron Bank, of Morristown, New Jersey, the petitioner, ORDERED that the said Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company, the Corporation Trust Company, trustee, the Commercial Trust Company of New Jersey, trustee, George E. Fisher, William J. O'Connor, William H. Jeffers and the bondholders and stockholders of the New Jersey and Pennsylvania Railroad Company, show cause before this court on Tuesday, the eighth day of December, in the year nineteen hundred and fourteen, at the Chancery Chambers, in Newark, at ten o'clock in the forenoon or as soon thereafter as counsel can heard why this court should not make an order for the sale of any property in the hands of the said

Order to Show Cause.

receiver, and for the sale and application of any property of the said the New Jersey and Pennsylvania Railroad Company liable therefore, for the purpose of providing for the payment of the amount due to the said the National Iron Bank, of Morristown, New Jersey, for the principal and interest of the aforesaid two certificates of indebtedness, in preference to any mortgage, judgment or other liens or claims thereon except the aforesaid mortgage given by Charles D. Haines to the executors and trustees of the last will and testament of Stephen Vail, deceased, and now held by William J. O'Connor or such other order as may be equitable and proper in the premises. 10

And it is further ORDERED that copies of this order (which not be certified) be served upon the president or other head officer of the Corporation Trust Company, trustee, the president or other head officer of the Commercial Trust Company of New Jersey, trustee, and Frederic V. Pitney, receiver of the New Jersey and Pennsylvania Railroad Company, within ten days from the date hereof, and that within the same time copies of this order be mailed to William H. Jeffers, George E. Fisher and William J. O'Connor and to each of the known bondholders and stockholders of the said the New Jersey and Pennsylvania Railroad Company; and that within the same time a copy of the petition on which this order is based be deposited with the Sergeant-at-Arms at the Chancery Chambers, Prudential building, Newark, New Jersey, for inspection by interested persons. 20 30

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C. 40

*Order Continuing Hearing.***Order Continuing Hearing.**

(Filed December 8, 1914).

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill, Etc.**On Petition
of National
Iron Bank.**Order
Continuing
Hearing.*

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This matter being opened to the court by John B. Vreeland, of counsel with the National Iron Bank, of Morristown, New Jersey, in the presence of Corwin Howell, of counsel with the receiver, and application being made on behalf of certain of the bondholders named in the petition of said the National Iron Bank, of Morristown, New Jersey, by Jacob Scholer, of the New York Bar, who is permitted to appear in this matter, for a continuance, and it appearing that notice has been given to the interested parties named in said petition.

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It is on this eighth day of December, in the year nineteen hundred and fourteen, ordered that the hearing on the order to show cause made in this cause on the nineteenth day of November last and returnable at this time be and the same is hereby continued to Tuesday, the twenty-ninth day of

Order Continuing Hearing.

December, instant, at ten o'clock in the forenoon,
or as soon thereafter as counsel can be heard, at
the Chancery Chambers, Prudential building, New-
ark, New Jersey.

E. R. WALKER,
C.

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Respectfully advised,

J. E. HOWELL,
V. C.

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New Order to Show Cause.

Order to Show Cause.

(Filed December 29, 1914.)

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> WILLIAM H. JEFFERS, <i>Complainant,</i> <i>and</i> THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY, <i>Defendant.</i>	}	<i>On Bill, &c. On Petition of the National Iron Bank of Morristown, New Jersey. Order.</i>
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20 It appearing that an order was made by this Court in the above stated cause on the seven-teenth day of November, in the year Nineteen Hundred and Fourteen, on the petition of The National Iron Bank of Morristown, New Jersey, directing the mortgagees, bondholders, stock-
 30 holders and judgment creditors of the defendant to show cause on the eighth day of December then next, why this Court should not order a sale
 40 of the real and personal property of the defendant to pay and satisfy the amount of two certain Receiver's Certificates, given by Frederic V. Pitney, the Receiver of the defendant to and held by the said petitioner, on which there is alleged to be due the principal sum of Seven Thousand Dollars, together with interest thereon from the first day of October, Nineteen Hundred and Thirteen, and that on the return day of said order the same was continued by the order of
 this Court to the twenty-ninth day of December, instant;

New Order to Show Cause.

AND IT FURTHER APPEARING that by the terms of said order to show cause uncertified copies thereof were directed to be mailed within ten days to the known bondholders and stockholders of the defendant, and proof having been filed of the mailing thereof;

And it being suggested that there are holders of bonds of the defendant to whom copies of said order to show cause were not mailed within the time limited by said order;

And the Court deeming it advisable that notice should be given to all known bondholders to whom notice has not heretofore been mailed, and application now being made for a further continuance of said order to show cause and for this order,

It is on this twenty-ninth day of December, in the year Nineteen Hundred and Fourteen, on motion of Vreeland & Wilson, of counsel with the National Iron Bank of Morristown, New Jersey, the petitioner, ORDERED, that the known bondholders not named in the petition and who have not been brought into Court do show cause before this Court on Tuesday, the twelfth day of January, Nineteen Hundred and Fifteen, at the Chancery Chambers, Newark, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why this Court should not make an order for the sale of any property in the hands of Frederic V. Pitney, Receiver of the defendant, and for the sale and application of any property of the said The New Jersey and Pennsylvania Railroad Company liable therefor, for the purpose of providing for the payment of the amount due to the said The National Iron Bank of Morristown, New Jersey, for the principal and interest of the aforesaid two certificates of indebtedness, in preference to any mortgage,

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New Order to Show Cause.

judgment or other lien or claim thereof except a mortgage given by Charles D. Haines to the Executors and Trustees of the last Will and Testament of Stephen Vail, deceased, to secure the payment of the sum of Seven Thousand Five Hundred Dollars and now held by William J. O'Connor, or such other as may be equitable and proper in the premises.

AND IT IS FURTHER ORDERED that copies of this order, which need not be certified, be mailed within five days after the date hereof to each of the known bondholders of the said The New Jersey and Pennsylvania Railroad Company, to whom notice has not heretofore been mailed.

AND IT IS FURTHER ORDERED that the hearing on the said petition of The National Iron Bank of Morristown, New Jersey, and the order to show cause issued as aforesaid, be, and the same hereby is continued to the said twelfth day of January, next.

E. R. WALKER,
C.

Respectfully advised.

J. E. HOWELL,
V. C.

Order for Continuance.

Order for Continuance.

(Filed January 12, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,
Defendant.

On Bill, &c.

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*On Petition
of the
National
Iron Bank of
Morristown,
New Jersey.
Order for
Continuance.*

It appearing that an order was made by this Court in the above stated cause on the seventeenth day of November, in the year Nineteen Hundred and Fourteen, on the petition of The National Iron Bank of Morristown, New Jersey, directing the mortgagees, bondholders, stockholders and judgment creditor of the defendant to show cause on the eighth day of December then next why there should not be an order for the sale of the real and personal property of the defendant to pay and satisfy the amount of two certain Receiver's Certificates given by Frederic V. Pitney, the Receiver of the defendant, to and held by the said petitioner upon which there appears to be due the principal sum of Seven Thousand Dollars (\$7,000.00) together with interest thereon from the first day of October, in the year Nineteen Hundred and Thirteen, the hearing on which said order to show cause has been continued from time to time to this twelfth day of January, in the year Nineteen Hundred and Fifteen.

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Order for Continuance.

And it further appearing that a certain other order was made by this Court in the above cause on the twenty-ninth day of December, in the year Nineteen Hundred and Fourteen, returnable on this day directing the known bondholders not named in the petition of the said The National
 10 Iron Bank of Morristown, New Jersey, and who had not been brought into Court, to show cause before this Court on this twelfth day of January, Nineteen Hundred and Fifteen, why such order for sale should not be made.

And it further appearing that by the terms of the said last mentioned order uncertified copies thereof were directed to be mailed within five days thereafter to each of the known bondholders of the said The New Jersey and Pennsylvania
 20 Railroad Company to whom notice had not theretofore been mailed and proof having been filed of the mailing thereof and application now being made for a further continuance of the said first mentioned order and also for a continuance of the said order to show cause made on the twenty-ninth day of December last.

It is, on this twelfth day of January, in the year Nineteen Hundred and Fifteen, on motion of Vreeland & Wilson, of counsel with the petitioner
 30 herein, ORDERED, that the hearing on the said petition and said two orders to show cause be, and the same is hereby continued to Tuesday, the twenty-sixth day of January, in the year Nineteen Hundred and Fifteen, at the Chancery Chambers in Newark, New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard.

E. R. WALKER,
 C.

40 Respectfully advised,
 J. E. HOWELL,
 V. C.

Order to Sell.

Order to Sell.

(Filed January 26, 1915.)

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	<i>On Bill, &c.</i>	10
WILLIAM H. JEFFERS,	<i>On Petition</i>	
<i>Complainant,</i>	<i>of the</i>	
<i>and</i>	<i>National</i>	
THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,	<i>Iron Bank of</i>	
<i>Defendant.</i>	<i>Morristown,</i>	
	<i>New Jersey.</i>	
	<i>Order</i>	
	<i>to Sell.</i>	

The National Iron Bank of Morristown, New Jersey, having filed its petition in this cause on the seventeenth day of November, in the year Nineteen Hundred and Fourteen, praying for an order for the sale of the railway line of the defendant, the New Jersey and Pennsylvania Railroad Company running from Watnong, in the Township and County of Morris and State of New Jersey, through the Counties of Morris, Somerset and Hunterdon, to Whitehouse Station, in said County of Hunterdon, and any other property in the hands of Frederic V. Pitney, the Receiver of said Railroad appointed by the Court of Chancery in this cause, and for the sale and application of any property of the said The New Jersey and Pennsylvania Railroad Company liable therefor, for the purpose of providing for the payment of the sum of Seven Thousand Dollars (\$7,000) the principal of two Receiver's Certificates of Indebtedness made and executed by the said Frederic V. Pitney, as Receiver of

Order to Sell.

the said defendant Railroad Company, one bearing date February fourteenth, Nineteen Hundred and Thirteen, for Three Thousand Dollars (\$3,000) and one bearing date June thirteenth, Nineteen Hundred and Thirteen, for Four Thousand Dollars (\$4,000) each payable at twelve months, together with accrued interest on said sum of Seven Thousand Dollars (\$7,000) from the first day of October, in the year Nineteen Hundred and Thirteen, which certificates by virtue of the order of this Court made on the twenty-eighth day of January, Nineteen Hundred and Thirteen, authorizing the same, are a first lien on the property, real and personal of the said defendant, in preference to any mortgage, judgment or other lien or claim thereon excepting only the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving Executors and Trustees under the last Will and Testament of Stephen Vail, deceased, bearing date the twenty-sixth day of April in the year Nineteen Hundred, and recorded in the Morris County Clerk's Office in Book H-5 of Mortgages on pages 524 &c., covering a tract of land situate in the Town of Morristown, in the said County of Morris and State of New Jersey, containing five acres and five hundredths of an acre be the same more or less, which mortgage is now held by one William J. O'Connor and is under foreclosure by him in this Court;

And an order to show cause having been made by this Court on the said seventeenth day of November, in the year Nineteen Hundred and Fourteen, directing the Receiver, the stockholders and bondholders and the mortgagees and judgment creditor of the defendant company to show cause on the eighth day of December, then next,

Order to Sell.

why an order should not be made for the sale of any property in the hands of the said Receiver and for the sale and application of any property of the said The New Jersey and Pennsylvania Railroad Company, liable therefor, for the purpose of providing for the payment of the amount due the said The National Iron Bank of Morristown, New Jersey, for the principal and interest of the aforesaid two certificates of indebtedness, in preference to any mortgage, judgment or other lien or claim thereon, except the aforesaid mortgage given by Charles D. Haines to the executors and trustees of the last will and testament of Stephen Vail, deceased, and now held by William J. O'Connor, or such other order as might be equitable and proper in the premises.

And the hearing of the said order to show cause having been duly continued from the said eighth day of December, to the twenty-ninth day of December, in the year Nineteen Hundred and Fourteen, and thence to this time;

And a further order of this Court having been made in said cause on the twenty-ninth day of December, in the year Nineteen Hundred and Fourteen, directing that the known bondholders not named in the said petition, and who had not been brought into Court, show cause before this Court on the twelfth day of January, Nineteen Hundred and Fifteen, at the Chancery Chambers, Newark, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as counsel could be heard, why this Court should not make an order for the sale of any property in the hands of Frederic V. Pitney, Receiver as aforesaid, and for the sale and application of any property of the defendant, The New Jersey and Pennsylvania Railroad Company liable therefor, for the purpose

Order to Sell.

of providing for the payment of the amount due to the said The National Iron Bank of Morristown, New Jersey, for the principal and interest of the aforesaid two certificates of indebtedness in preference to any mortgage, judgment or other lien or claim thereon except the aforesaid mortgage given by Charles D. Haines, or such other order as might be equitable and proper in the premises;

And the hearing on said last mentioned order to show cause having been duly continued to this day;

And proof by affidavits of service and of the mailing of copies of said orders as required by said two orders having been presented to the Court and filed, and a copy of the said petition having been deposited with the Sergeant-at-Arms of this Court, at the Chancery Chambers, Newark, as directed by the first named order, and due proof thereof by affidavit having been filed;

And the Court having heard Vreeland & Wilson, of counsel with the said The National Iron Bank of Morristown, New Jersey, and Corwin Howell, Esquire, representing Pitney, Hardin & Skinner, the solicitors of the said Receiver;

And it appearing to the satisfaction of the Court that there is due to the said The National Iron Bank of Morristown, New Jersey, on the said two Receiver's Certificates the principal sum of Seven Thousand Dollars (\$7,000) with interest thereon from the first day of October, in the year Nineteen Hundred and Thirteen, and the Court being of the opinion that the prayer of the said petitioner should be granted;

It is, on this twenty-sixth day of January, in the year Nineteen Hundred and Fifteen, on motion of Vreeland & Wilson, solicitors for the said

Order to Sell.

petitioner, The National Iron Bank of Morristown, New Jersey, ORDERED, ADJUDGED AND DECREED that there is due the National Iron Bank of Morristown, New Jersey, upon the two Receiver's Certificates of Indebtedness above set forth the sum of Seven Thousand Dollars (\$7,000) with lawful interest thereon from the first day of October, in the year Nineteen Hundred and Thirteen, together with its costs of suit to be taxed, to be raised and paid out of the real and personal property of the defendant, the New Jersey and Pennsylvania Railroad Company and that said certificates of indebtedness are a first lien upon all the property real and personal of the said defendant Railroad Company in preference to any mortgage, judgment or other lien or claim thereon, excepting only the taxes due thereon to the State of New Jersey and the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, Executors and Trustees under the last Will and Testament of Stephen Vail, deceased, dated the twenty-sixth day of April in the year Nineteen Hundred, and recorded in the Clerk's Office of the County of Morris, in the State of New Jersey, on the fifth day of May in the year Nineteen Hundred in Book H-5 of Mortgages, pages 524 &c., securing the bond of even date therewith executed by Charles D. Haines conditioned for the payment of Seven Thousand Five Hundred Dollars (\$7,500) in two years after the date thereof with interest at the rate of five per centum per annum, on the land described in said mortgage comprising five acres and five hundredths of an acre, be the same more or less.

And it is further ORDERED, ADJUDGED AND DECREED that the railroad line of the said defendant

Order to Sell.

10 The New Jersey and Pennsylvania Railroad Company and all real and personal property of the said defendant corporation including all its franchises, rights, privileges, effects and all its assets of every character and description whatsoever, and all the right, title and interest of the said
 20 Frederic V. Pitney, Receiver, thereto, be sold by the said Receiver free and clear of any mortgage, judgment, receiver's certificate or other lien or claim thereon whatsoever, excepting only the taxes due thereon to the State of New Jersey and the mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees under the last will and testament of Stephen Vail, deceased, and above mentioned, to raise and satisfy the said debt,
 20 interest and costs due to the petitioner, The National Iron Bank of Morristown, New Jersey;

And it is further ORDERED, ADJUDGED AND DECREED that the said Receiver make sale of the property aforesaid as an entirety, at either public or private sale, in his discretion, for the highest and best price that the same will bring in cash; and that the said Receiver after any sale by him do make report thereof to this Court for confirmation.

30 And it is further ORDERED, ADJUDGED AND DECREED that out of the proceeds of the sale the said Receiver do pay to the said The National Iron Bank of Morristown, New Jersey, or its solicitors, its said debt, interest and costs, and to the solicitors of the said The National Iron Bank of Morristown, New Jersey, a counsel fee of Two Hundred and Fifty Dollars; that in case more money should be raised by the sale than shall be sufficient to answer such payment such
 40 surplus money shall be administered by said

Order to Sell.

Receiver according to law and the further orders of this Court;

And it is further ORDERED, ADJUDGED AND DECREED that all the parties to this proceeding stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said real and personal property when sold in accordance with this decree. 10

E. R. WALKER,
C.

Respectfully advised,
J. E. HOWELL,
V. C.

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Order Amending Order to Sell.

Order Amending Order to Sell.

(Filed September 15, 1915).

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY & PENNSYLVANIA
RAILROAD COMPANY,
Defendant.

On Bill, &c.

*On Petition of
the National
Iron Bank of
Morristown,
New Jersey.*

*Order
Amending
Order to Sell.*

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It appearing that in and by an order made in this cause on the petition of The National Iron Bank of Morristown, New Jersey, which order was dated the twenty-sixth day of January, Nineteen Hundred and Fifteen, it was among other things ordered, adjudged and decreed that the receiver of the defendant railroad company make sale of the property of said railroad as an entirety at either public or private sale in his discretion, for the highest and best price that the same would bring in cash; and it further appearing that while the entire property should be sold it may nevertheless be advisable that said property in said receiver's discretion be sold in parcels; and it further appearing that the said receiver, under authority of said order of this Court, dated January twenty-sixth, Nineteen hundred and fifteen, has already commenced advertising a public sale of said property, to be held on Tuesday, the twenty-first day of September, Nineteen hundred and fifteen, and that

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Order Amending Order to Sell.

the method of sale in parcels, if same be deemed advisable, may be set forth in the conditions of sale, and that the advertisement already posted and published is sufficient without any amendment thereto.

It is on this 14th day of September, Nineteen hundred and fifteen, on motion of Vreeland & Wilson, solicitors for said petitioner, The National Iron Bank of Morristown, New Jersey, ORDERED, that said order of this Court made in the above entitled cause on the twenty-sixth day of January, Nineteen hundred and fifteen, be and the same is hereby amended *nunc pro tunc* so as to direct said receiver to make sale of the entire property aforesaid, either as a whole or in parcels in his discretion; and it is further ordered that said receiver do proceed to a public sale under the advertisement commenced by him as aforesaid, without any change or amendment to the same.

E. R. WALKER,
C.

Respectfully advised,
J. E. HOWELL,
V. C.

Petition of Receiver for Order of Confirmation.

**Petition of Receiver for Order of
Confirmation.**

(Filed October 18, 1915).

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA
RAILROAD COMPANY,

Defendant.

On Bill, Etc.

Petition.

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

The petition of Frederic V. Pitney, receiver for the creditors and stockholders of the New Jersey and Pennsylvania Railroad Company, defendant in the above entitled cause, respectfully shows:

- 30 1. That by an order of this court made in the above stated cause on the thirty-first day of December, nineteen hundred and twelve, he was appointed receiver of the property of the New Jersey and Pennsylvania Railroad Company, and that on the second day of January, nineteen hundred and thirteen, your petitioner duly qualified and filed in this court his bond and oath of office as required in the order appointing him receiver; that your petitioner still occupies the office of receiver of said railroad.

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Petition of Receiver for Order of Confirmation.

2. That an order was made in the above entitled cause on the twenty-eighth day of January, nineteen hundred and thirteen (due notice of your petitioner's application having been given to the creditors, bondholders and mortgagees of the defendant corporation) that your petitioner have authority to borrow money by the issue of receiver's certificates of indebtedness, maturing not later than twelve months from their date and not at any one time exceeding in amount seven thousand dollars, and carrying interest at not exceeding the legal rate, which certificates of indebtedness it was directed in and by said order should be a first lien upon the property, real and personal, of the defendant railroad company in preference to any mortgage, judgment or other liens or claims thereon, excepting only a mortgage given to secure the sum of seventy-five hundred dollars by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors and trustees under the last will and testament of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the clerk's office of the County of Morris in the State of New Jersey, on the fifth day of May, nineteen hundred, in Book H-5 of Mortgages, pages 524, etc., securing the bond of even date of the said Charles D. Haines, conditioned for the payment of seventy-five hundred dollars in two years after the date thereof, with interest at the rate of five per centum per annum on the lands described in said mortgage, comprising five and five one-hundredths of an acre in the town of Morristown, in the County of Morris and State of New Jersey, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company, the said last mentioned railroad company having subsequently to the date of said mortgage been

Petition of Receiver for Order of Confirmation.

merged into the New Jersey and Pennsylvania Railroad Company, the defendant in this suit.

3. That in pursuance of the authority contained in the said order, your petitioner did on the fourteenth day of February in the year nineteen hundred and thirteen, borrow of the National Iron Bank of Morristown, the sum of three (\$3,000) thousand dollars upon his certificate of indebtedness bearing date the day and year last aforesaid, and did on the thirteenth day of June, in the year nineteen hundred and thirteen, borrow from said National Iron Bank of Morristown, an additional sum of \$4,000 upon a certain other certificate of indebtedness bearing date the day and year last aforesaid; that both of said certificates were made payable within twelve months from their respective dates and bore interest at the rate of six per centum per annum payable every three months; that subsequently your petitioner was ordered by the Board of Public Utility Commissioners of this State to cease the operation of said railroad, on the ground that safe and adequate service was not being rendered in the operation of the same; that your petitioner was without funds to pay either the principal of said receiver's certificates upon their maturity, or to pay the interest accruing thereon from the first day of October, nineteen hundred and thirteen.

4. That thereupon on or about the seventeenth day of November, nineteen hundred and fourteen, said National Iron Bank of Morristown, New Jersey, through Messrs. Vreeland & Wilson, its solicitors, filed its petition in this court, praying for the sale of all the property and assets of the defendant company in order to pay and satisfy the amount due on said receiver's certificates in preference to any mortgage, judgment or other liens or

Petition of Receiver for Order of Confirmation.

claims upon said property; that thereupon such proceedings were had in this court in this cause, due notice having been given by said National Iron Bank of Morristown, or by its said counsel, in accordance with the directions of the court, to the known encumbrancers of record, to wit, the four following encumbrancers, (1) George E. Fisher, a mortgagee, (2) Corporation Trust Company, a corporation of the State of New Jersey, a mortgagee under a trust mortgage, (3) Commercial Trust Company of New Jersey, a mortgagee under a trust mortgage, and (4) William H. Jeffers, a judgment creditor, and also to the known bondholders and stockholders of the said defendant railroad company, that on the twenty-sixth day of January, nineteen hundred and fifteen, an order was made by this court adjudging and decreeing that there is due to the National Iron Bank of Morristown, New Jersey, upon the two receiver's certificates aforesaid the sum of seven thousand dollars with lawful interest thereon from the first day of October, nineteen hundred and thirteen, together with its costs of suit to be taxed, and ordering and adjudging that said certificates of indebtedness are a first lien upon all the property, real and personal, of the defendant railroad company in preference to any mortgage, judgment or other lien or claim thereon, excepting only the taxes due thereon to the State of New Jersey and the aforesaid mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, executors of and trustees under the last will and testament of Stephen Vail, deceased; and further adjudging and decreeing that the railroad line of the said defendant company and all real and personal property of the said defendant, including all its franchises, rights, privileges, effects and all its assets of every character

Petition of Receiver for Order of Confirmation.

and description whatsoever, and all the right, title and interest of the said Frederic V. Pitney, receiver thereto, be sold by the said receiver free and clear of any mortgage, judgment, receiver's certificate or other lien or claim thereon whatsoever, excepting only the taxes due thereon to the State of
 10 New Jersey and the aforesaid mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors of and trustees under the last will and testament of Stephen Vail, deceased, to raise and satisfy the said debt, interest and costs due to the petitioner, the National Iron Bank of Morristown, New Jersey, and further adjudging and decreeing that the said receiver make sale of the property aforesaid at either public
 20 or private sale, in his discretion, at the highest and best price that the same would bring in cash, and that the said receiver, after any sale by him, do make report thereof to this court for confirmation, and further adjudging and decreeing that all the parties to said proceeding stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said real and personal property when sold in accordance with this decree.

5. That subsequent to the date of said order one William J. O'Connor, the holder by assignment of
 30 said mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, executors of and trustees under the last will and testament of Stephen Vail, deceased, obtained a decree of foreclosure of his said mortgage, having by leave of this Court made your petitioner a party to his suit; that said mortgage covered five and five one-hundredths of an acre of land adjoining Speedwell Avenue in the town of Morristown aforesaid; that
 40 as a result of the foreclosure of said mortgage by said William J. O'Connor, said tract of land cov-

Petition of Receiver for Order of Confirmation.

ered by said mortgage was sold and your petitioner divested of title thereto; that your petitioner is therefore able to make sale of all the property, real and personal, franchises, rights and effects of the New Jersey and Pennsylvania Railroad Company now vested in him free from the lien of and without reference to said mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, executors of and trustees under the last will and testament of Stephen Vail, deceased. 10

6. That your petitioner has recently, in accordance with the statute in such case made and provided, made application to the Board of Public Utility Commissioners of this State to compromise the taxes upon said railroad company due to the State of New Jersey; that said board by its report dated the twenty-eighth day of June, nineteen hundred and fifteen, recommended the reduction of the taxes from a sum in excess of forty-two thousand dollars to fifteen thousand dollars, provided said sum is paid to the State on or before November first, nineteen hundred and fifteen; that said report was on the first day of July, nineteen hundred and fifteen, approved by the Governor of this State under the authority given him in and by said statute. 20

7. That on the twenty-first day of September, nineteen hundred and fifteen, under the authority of the order of this court made on the twenty-sixth day of January, nineteen hundred and fifteen, hereinabove referred to, your petitioner after proper advertisement offered the property of said defendant corporation at public auction in two parcels at the Court House in the City of Morristown, in the County of Morris, and received a bid from one M. Irving Demarest of twenty-three thousand five hundred dollars for the first parcel and five 30 40

Petition of Receiver for Order of Confirmation.

hundred dollars for the second parcel, the two parcels comprising the entire property of the defendant company other than the cash in the hands of the receiver, no other bidder offering as much for either parcel; that thereafter your petitioner reported said sale to this court and an order to

10 show cause was made requiring the creditors and stockholders of the defendant corporation to show cause why said sale should not be confirmed on the fifth day of October, nineteen hundred and fifteen; that service of said order to show cause was made on said creditors and stockholders as required by said order, and on the return day Frank B. Allen appeared in behalf of certain stockholders, and George E. Fisher, a creditor and stockholder appeared in his own behalf, and objected to the con-

20 firmation of said sale on the ground of the inadequacy of the price; that the matter was then continued until the thirteenth day of October, nineteen hundred and fifteen, and on that date further continued until the eighteenth day of October, nineteen hundred and fifteen, on which date the said Allen and Fisher again appeared together with John B. Vreeland, Esquire, representing the National Iron Bank of Morristown, holding the receiver's certificates specifically described in the order for sale,

30 and J. H. Thayer Martin, Esquire, appearing for M. Irving Demarest, the highest bidder at the public sale above referred to; that after hearing counsel and considering the matter the court refused to confirm the sale and directed the receiver to return the deposit money received to the said M. Irving Demarest.

8. That immediately after the hearing in the court room on the said eighteenth day of October, nineteen hundred and fifteen, and the announcement

40 by the court of its determination not to confirm

Petition of Receiver for Order of Confirmation.

said sale on account of inadequacy of price, your petitioner, together with the said John B. Vreeland, Esquire, representing the said National Iron Bank of Morristown, J. H. Thayer Martin, Esquire, representing the said M. Irving Demarest, and the said M. Irving Demarest, the said Frank B. Allen and the said George E. Fisher went to the office of your petitioner's counsel, Messrs. Pitney, Hardin & Skinner, and there in the presence of all the persons named, the said Frank B. Allen made an offer to purchase at private sale from your petitioner the property specifically described in his offer, copy of which is attached hereto, for the sum of twenty-seven thousand dollars, and the said George E. Fisher offered to purchase from your petitioner at private sale the property described in his offer, copy of which is attached hereto, for the sum of sixteen hundred dollars; that opportunity was afforded by your petitioner to the said John B. Vreeland, the said M. Irving Demarest and his counsel, the said J. H. Thayer Martin, and to other persons present, among such other persons being one Quimby who had some negotiation with your petitioner concerning the possible purchase of said property, and no persons being willing to give any larger sum for either parcel, or for the property together in one parcel, your petitioner accepted the said bids and received from the said Allen and Fisher a ten per cent. deposit on their respective bids, subject to the confirmation by this Court of the sale of said property at private sale to the said Allen and Fisher respectively, in the parcels aforesaid.

9. That the combined bids of the said Allen and Fisher amount to twenty-eight thousand six hundred dollars, being an advance of forty-six hundred dollars over the bids of the said M. Irving Demarest

Petition of Receiver for Order of Confirmation.

made at the said public auction hereinabove referred to; that all the persons who have shown any interest in the sale or purchase of said property by responding to the notice given by your petitioner under the direction of this court of the application for confirmation of said sale at public auction were
 10 present when the offers of the said Allen and Fisher to purchase at private sale were made to your petitioner and ample opportunity afforded to become bidders for said property; that your petitioner is convinced that no larger sum can be obtained and he therefore reports the sales to this court, recommending that they be confirmed and your petitioner directed to complete the sale; that all the creditors and stockholders were advised of the sale of the
 20 property at a lesser price and none of them appeared except as hereinbefore noted, and there seems to be no reason why the sale should not be immediately confirmed, especially as the taxes to be paid to the State of New Jersey under the compromise arrangement hereinabove set forth must be paid before the first of November under penalty of the loss of the benefit of said compromise.

Your petitioner therefore prays that an order may be made confirming the sales to the said Allen and Fisher and directing the conveyances accordingly.
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All of which is respectfully submitted this eighteenth day of October, nineteen hundred and fifteen.

PITNEY, HARDIN & SKINNER,
Solicitors for Petitioner.

Petition of Receiver for Order of Confirmation.

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

Frederic V. Pitney being duly sworn according to law upon his oath says that he is the receiver of the New Jersey & Pennsylvania Railroad Company and the petitioner in the foregoing petition named; that he has read the foregoing petition and that the facts therein stated are true to the best of his knowledge and belief, and that the copies of the offers of purchase made to petitioner by Frank B. Allen and George E. Fisher in said petition referred to, attached to this petition, are true copies. 10

FREDERIC V. PITNEY.

Subscribed and sworn to, before me, 20
 this 18th day of October, 1915.

HOWELL M. STILLMAN,
Notary Public of New Jersey.

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*Order Confirming Sale.***Order Confirming Sale.**

Filed October 18, 1915.

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

20

*Defendant.**On Bill, &c.,**On Petition
of Receiver
Presenting
Bids of Frank
B. Allen and
George E.
Fisher.**Order
Confirming
Sale.*

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The petition of Frederic V. Pitney, Receiver for the creditors and stockholders of The New Jersey and Pennsylvania Railroad Company, having heretofore been filed, to wit: on the eighteenth day of October, nineteen hundred and fifteen, from which petition it appears, among other things, that an order was made in the above entitled cause on the twenty-eighth day of January, nineteen hundred and thirteen, directing that the Receiver have authority to borrow money by the issue of Receiver's certificates for indebtedness, maturing not later than twelve months from their date and not at any one time exceeding in amount Seven Thousand Dollars and carrying interest at not exceeding the legal rate, which certificates of indebtedness, it was directed in and by said order, should be a first lien upon the property, real and personal, of the defendant Railroad Company in preference to any mortgage, judgment or

Order Confirming Sale.

other liens or claims thereon, excepting only a mortgage given to secure the sum of seventy-five hundred dollars by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors of and trustees under the last will and testament of Stephen Vail, deceased, dated April twenty-sixth, nineteen hundred, and recorded in the clerk's office of the County of Morris, in the State of New Jersey, on the fifth day of May, nineteen hundred, in Book H 5 of Mortgages, pages 524, &c., securing the bond of even date of the said Charles D. Haines, conditioned for the payment of seventy-five hundred dollars in two years after the date thereof, with interest at the rate of five per centum per annum, on the lands described in said mortgage, comprising five and five one-hundredths of an acre in the Town of Morristown, in the County of Morris and State of New Jersey, and subsequently conveyed by the said Charles D. Haines to the Speedwell Lake Railroad Company, the said last mentioned railroad company having subsequent to the date of said mortgage been merged into The New Jersey and Pennsylvania Railroad Company, the defendant in this suit;

And from which it further appears that in pursuance of the authority contained in said order, the said Receiver did, on the fourteenth day of February, in the year nineteen hundred and thirteen, borrow of the National Iron Bank of Morristown the sum of three thousand dollars upon his certificates of indebtedness, bearing date the day and year last aforesaid, and did, on the thirteenth day of June, in the year nineteen hundred and thirteen, borrow from said National Iron Bank of Morristown an additional sum of four thousand dollars upon a certain other cer-

Order Confirming Sale.

tificate of indebtedness, bearing date the day and year last aforesaid, both of said certificates being made payable within twelve months from their respective dates and bearing interest at the rate of six per centum per annum, payable every three months;

- 10 And from which it further appears that the Receiver was without funds to pay either the principal of said certificates upon their maturity or to pay the interest accruing thereon from the first day of October, nineteen hundred and thirteen, and that thereupon on or about the seventeenth day of November, nineteen hundred and fourteen, said National Iron Bank of Morristown, New Jersey, through Messrs. Vreeland & Wilson, its solicitors, filed its petition in this Court,
- 20 praying for the sale of all the property and assets of the defendant company in order to pay and satisfy the amount due on said Receiver's certificates in preference to any mortgage, judgment or other lien or claims upon said property; and that due notice of said application, in accordance with the directions of the Court, was given by said National Iron Bank of Morristown, or by its said counsel, to the known encumbrancers of record, to-wit., the four following
- 30 encumbrancers: (1) George E. Fisher, a mortgagee, (2) Corporation Trust Company, a corporation of the State of New Jersey, a mortgagee under a trust mortgage; (3) Commercial Trust Company of New Jersey, a mortgagee under a trust mortgage, and (4) William H. Jeffers, a judgment creditor, and also to the known bondholders and stockholders of the said defendant Railroad Company; and that thereupon on the
- 40 Twenty-sixth day of January, Nineteen Hundred and Fifteen, an order was made by this Court

Order Confirming Sale.

adjudging and decreeing that said certificates of indebtedness are a first lien upon all the property, real and personal, of the defendant Railroad Company in preference to any mortgage, judgment or other lien or claim thereon, excepting only the taxes due thereon to the State of New Jersey and the aforesaid mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, executors of and trustees under the last will and testament of Stephen Vail, deceased; 10

And from which petition of said Receiver filed on or about July twentieth, nineteen hundred and fifteen, as aforesaid, it further appears that in and by said order of this Court made on the twenty-sixth day of January, nineteen hundred and fifteen, in this cause it was further adjudged and decreed that the railroad line of the said defendant company and all real and personal property of the said defendant, including all its franchises, rights, privileges, effects and all its assets of every character and description whatsoever, and all the right, title and interest of the said Frederic V. Pitney, Receiver, thereto, be sold by the said Receiver free and clear of any mortgage, judgment, Receiver's certificates or other lien or claim thereon whatsoever, excepting only the taxes due thereon to the State of New Jersey and the aforesaid mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors of and trustees under the last will and testament of Stephen Vail, deceased, to raise and satisfy the said debt, interest and costs due to the said petitioner, the National Iron Bank of Morristown, New Jersey; and that in and by said order of this Court made in this cause on the twenty-sixth day of January, 20 30 40

Order Confirming Sale.

nineteen hundred and fifteen, it was further adjudged and decreed that the said Receiver make sale of the property aforesaid at either public or private sale, in his discretion, at the highest and best price the same would bring in cash, and that the said Receiver, after any sale by him, do
 10 make report thereof to this Court for confirmation, and that it was further adjudged and decreed that all the parties to said proceeding stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said real and personal property when sold in accordance with said decree;

And from which petition of said Receiver it further appears that one William J. O'Connor, the holder by assignment of said mortgage given
 20 by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors of and trustees under the last will and testament of Stephen Vail, deceased, duly obtained a decree of foreclosure of his said mortgage, having first by leave of this Court duly made the Receiver a party to his suit, and that as a result of the foreclosure of the said mortgage by said William J. O'Connor said tract of land, comprising five and five one-hundreds of an acre of land in the
 30 Town of Morristown, covered by said mortgage, was sold and the Receiver divested of title thereto; and that the Receiver is, therefore, able to make sale of all the property, real and personal, franchises, rights and effects of the New Jersey and Pennsylvania Railroad Company now vested in him free from the lien of and without reference to said mortgage given by Charles D. Haines to Alfred Mills and John H. Lidgerwood, surviving executors of and trustees under the last
 40 will and testament of Stephen Vail, deceased;

Order Confirming Sale.

And from which petition of said Receiver it further appears that on the eighteenth day of October, nineteen hundred and fifteen, said Receiver received from George E. Fisher, Esquire, at private sale, a bid or offer to purchase the following property of the defendant Railroad Company, to-wit:

10

Four tracts of land in the Township of Morris and State of New Jersey, as follows:

The first as described in a deed of conveyance from Julia B. Sherman to Speedwell Lake Railroad Company, dated August 27, 1898, and recorded in the Morris County Clerk's office in Book T-15 of Deeds for said County on page 62; the second as described in a deed of award by George H. Ross and others, commissioners, to said Speedwell Lake Railroad Company, dated April 2, 1898, and recorded in the Morris County Clerk's office in Book A of Awards, page 167; the third as described in a deed of award made by George H. Ross and others, commissioners, to said Speedwell Lake Railroad Company, dated April 14, 1898, and recorded in Book A of Awards, on page 180; and the fourth as described in a deed of conveyance by Robert D. Foote and wife to said Speedwell Lake Railroad Company, dated May 4, 1900, and recorded in the Morris County Clerk's office in Book of Deeds of said County, page —, for the sum of sixteen hundred dollars;

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30

And that said George E. Fisher, by an agreement in writing dated the day and year last aforesaid, agreed to purchase said property from said Receiver for the price aforesaid, a true copy of said agreement being annexed to said petition of said Receiver and by reference made a part thereof.

40

Order Confirming Sale.

And from which petition of said Receiver it further appears that on the said eighteenth day of October, nineteen hundred and fifteen, said Receiver received from Frank B. Allen, Esquire, at private sale, a bid or offer to purchase all the property and franchises of the defendant railroad company other than the real estate above mentioned, bid for by the said George E. Fisher, and consisting of four tracts of land, and other than cash in the hands of said Receiver and bills and accounts receivable, for the sum of twenty-seven thousand dollars; and that said Frank B. Allen, by agreement in writing dated the day and year last aforesaid, agreed to purchase said property from said Receiver for the price aforesaid, a true copy of said agreement being annexed to said petition of said receiver and by reference made a part thereof;

And from which petition it further appears that a sale of said property of the defendant railroad company, at public auction on the twenty-first day of September, nineteen hundred and fifteen, for the sum of twenty-four thousand dollars (\$24,000) has been refused confirmation by this Court, and that the combined bid of the said Fisher and Allen amount to twenty-eight thousand six hundred dollars (\$28,600), being an advance of forty-six hundred dollars (\$4,600) over said prior bid made at public auction; and that all the persons who have shown any interest in the sale or purchase of said property by responding to the notice given by your petitioner under the direction of this Court of the application for confirmation of said sale at public auction, were present when the offers of the said Fisher and Allen to purchase at private sale, were made to said receiver, and ample opportunity afforded to be-

Order Confirming Sale.

come bidders for said property, and that said receiver is convinced that no larger sum can be obtained; and that all the creditors and stockholders were advised of the sale of the property at a lesser price, to-wit., by the service of an order to show cause made in this matter on the twenty-eighth day of September, nineteen hundred and fifteen, why said sale should not be confirmed on the fifth day of October, nineteen hundred and fifteen, and none of said creditors and stockholders appearing, except the said Fisher and Allen, and John B. Vreeland, Esquire, representing the National Iron Bank of Morristown; and the said John B. Vreeland being present when said offers of the said Fisher and Allen were received and declining to make any higher bid or bids for the property of the defendant railroad company or for either of the parcels thereof, than the offers that were made by the said Fisher and Allen, respectively. 10 20

And no reason appearing why the sales to said Fisher and Allen should not be immediately confirmed.

And it further appearing by said petition that the taxes to be paid to the State of New Jersey under the compromise arrangement effected, as described in said petition, must be paid before the first of November, nineteen hundred and fifteen, under penalty of the loss of the benefit of said compromise; 30

And this matter being now opened to the Court by Pitney, Hardin & Skinner, solicitors for and of counsel with Frederic V. Pitney, the receiver of the above named defendant company;

It is on this eighteenth day of October, nineteen hundred and fifteen, on motion of Pitney, Hardin & Skinner, solicitors for said receiver, 40

Order Confirming Sale.

ordered that the said receiver accept the said respective offers of the said George E. Fisher and the said Frank B. Allen, and that the sale by the said receiver of the property and franchises of the defendant railroad company at private sale being in all things approved and confirmed by this Court.

It is further ordered that the said receiver do make and execute unto the said George E. Fisher, or his assigns, a good and sufficient conveyance in the law, by bargain and sale deed, of the above described property included within the offer of the said George E. Fisher.

It is further ordered that the said receiver do make and execute unto the said Frank B. Allen, or his assigns, a good and sufficient conveyance in the law, by bargain and sale deed, of the above described property included within the offer of the said Frank B. Allen.

And it is further ordered that both the sale to the said Fisher and the sale to the said Allen be made free and clear from the following described encumbrances:

1. A mortgage dated May fourth, nineteen hundred, from the Speedwell Lake Railroad Company to Robert D. Foote, recorded in the Morris County Clerk's office on May ninth, nineteen hundred, in Book H 5 of Mortgages, on pages 540, &c., to secure the payment of the sum of fifty-nine hundred and eighteen dollars and ninety-three cents (\$5,918.93) with interest at six per centum, which mortgage was assigned by the said Robert D. Foote to George E. Fisher by deed of assignment dated the eighteenth day of September, nineteen hundred and one, and recorded in said clerk's office on September twenty-third, nineteen

Order Confirming Sale.

hundred and one, in book No. 21 of Assignments of Mortgages, on pages 86, &c.

2. A mortgage dated June first, nineteen hundred and seven, made by the New Jersey & Pennsylvania Railroad Company to Corporation Trust Company, as trustee, to secure bondholders of a series of bonds not exceeding two hundred thousand dollars (\$200,000). 10

3. A mortgage dated the first day of November, nineteen hundred and twelve, made by the New Jersey & Pennsylvania Railroad Company to Commercial Trust Company of New Jersey, trustee, to secure bondholders of a series of bonds not exceeding five hundred thousand dollars (\$500,000).

4. A judgment recovered on or about the sixth day of November, nineteen hundred and twelve, by one George M. Frech against the said The New Jersey & Pennsylvania Railroad Company in the Supreme Court of the State of New Jersey, for the sum of forty hundred and twenty dollars and ninety-eight cents (\$4,020.98), which said judgment was assigned by the said George M. Frech to one William H. Jeffers by deed of assignment bearing date the twenty-sixth day of November, nineteen hundred and twelve, and recorded in the office of the clerk of the Supreme Court of New Jersey. 20 30

5. Receiver's certificates issued by said receiver to the National Iron Bank of Morristown, New Jersey, on which seven thousand dollars (\$7,000) is due with interest from October first, nineteen hundred and thirteen.

And it is further ordered that the said receiver deliver said deeds to the said George E. Fisher and the said Frank B. Allen, respectively, upon 40

Order Confirming Sale.

their carrying out their said bids or offers, and paying the respective balances of the purchase price agreed upon.

And it is further ordered that from the proceeds of the said sales said receiver do pay the sum of fifteen thousand dollars (\$15,000) in satisfaction of the taxes due to the State of New Jersey, hereinbefore referred to, and that said receiver hold any balance of said proceeds to abide the further order of this Court.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

A true copy.

C. HOWELL.

*Petition and Report of Receiver and Final Account.***Petition and Report of Receiver and
Final Account.**

Filed December 13, 1915.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill for
Receiver.**Petition and
Report of
Receiver
and Final
Account.*

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*To His Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey.*

The petition and report of Frederic V. Pitney,
Receiver of The New Jersey & Pennsylvania Rail-
road Company, respectfully shows:

1. That your petitioner does respectfully report
to the Chancellor that the account attached hereto
marked Exhibit A is a just and true account of
all monies that have come to his hands as Re-
ceiver as aforesaid, and also of the monies that
have been disbursed by him as such receiver; that
the account attached hereto marked Exhibit B
is a true account of the claims against said com-
pany which have been presented to, and allowed
by your petitioner as Receiver;
2. That your petitioner has at various times
duly reported to this Court in detail the situation
as to said railroad company during your peti-

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Petition and Report of Receiver and Final Account.

tioner's receivership, and that in particular, your petitioner on the eighteenth day of October, nineteen hundred and fifteen, filed his petition in this Court setting forth that a sale made by him of all the assets of said railroad company at public sale had been reported to this Court and that
 10 this Court had refused to confirm the same; that thereupon your petitioner on the eighteenth day of October, nineteen hundred and fifteen, received from one George E. Fisher an offer to purchase from your petitioner at private sale for the sum of sixteen hundred dollars certain premises of the defendant railroad company described as four tracts of land in the Township of Morris and in the Town of Morristown in the County of Morris and State of New Jersey, as follows:

20 The first as described in a deed of conveyance from Julia B. Sherman to Speedwell Lake Railroad Company, dated August 27, 1898, and recorded in the Morris County Clerk's office in Book T-15 of Deeds for said county, on page 62; the second as described in a deed of award by George H. Ross and others, commissioners, to said Speedwell Lake Railroad Company, dated April 2, 1898, and recorded in the Morris County Clerk's office in Book A of Awards, page 167;
 30 the third as described in a deed of award made by George H. Ross and others, commissioners, to said Speedwell Lake Railroad Company, dated April 14, 1898, and recorded in Book A of Awards, on page 180; and the fourth as described in a deed of conveyance by Robert D. Foote and wife to said Speedwell Lake Railroad Company, dated May 4, 1900, and recorded in the Morris County Clerk's office in Book G-16 of Deeds for said county, page 291, &c.

Petition and Report of Receiver and Final Account.

3. Further that your petitioner received from one Frank B. Allen an offer to purchase at private sale from your petitioner for the sum of twenty-seven thousand dollars all the property and franchises of the defendant railroad company other than the real estate above mentioned bid for by the said George E. Fisher, and other than cash 10
in the hands of your petitioner and bills and accounts receivable.

4. That said sales to said Fisher and Allen were by an order of this Court made in this cause on said eighteenth day of October, nineteen hundred and fifteen, duly approved and confirmed; that your petitioner, in accordance with the direction of said last mentioned order, did make and execute unto the said George E. Fisher and the said Frank B. Allen, respectively, good and 20
sufficient conveyances in the law of the property sold to them, and that your petitioner has received from said persons the entire amount of the consideration money agreed by them to be paid, to-wit., the sum of twenty-eight thousand six hundred dollars;

5. That in accordance with the directions of the order for sale in this cause made on the twenty-sixth day of January, nineteen hundred and fifteen, your petitioner made the sale aforesaid 30
free and clear of the encumbrances known to your petitioner, excepting the taxes due to the State of New Jersey; these taxes, including those due and payable between November 1, 1914, and February 1, 1915, in conformity with a compromise recommended by the Board of Public Utility Commissioners and approved by the Governor, have been settled by the payment by your petitioner to the Treasurer of the State of New Jersey from the proceeds of the sale of the sum of \$15,000; 40

Petition and Report of Receiver and Final Account.

that payment of said sum by your petitioner as aforesaid was directed in and by said order confirming said sale made on the 18th day of October, 1915; that the balance now in your petitioner's hands, as shown by his account annexed hereto as aforesaid as Exhibit A, is the sum of \$13,985.77;

- 10 6. That your petitioner, in pursuance of the authority of an order made in this cause on the 28th day of January, 1913, did on the 14th day of February, 1913, borrow of the National Iron Bank of Morristown, New Jersey, an additional sum of \$3,000 upon his certificate of indebtedness bearing date the day and year last aforesaid, and did on the 13th day of June, in the year nineteen hundred and thirteen, borrow from said Notional Iron Bank of Morristown an additional
- 20 sum of \$4,000 upon a certain other certificate of indebtedness bearing date the day and year last aforesaid; that both of said certificates were made payable within twelve months from their respective dates and bore interest at the rate of six per centum per annum, payable every three months; that no part of the principal of said receiver's certificates has been paid and that interest is due thereon from the first day of October, 1913; that the sale by
- 30 your petitioner was made free and clear of the lien of said receiver's certificates, as above mentioned;

7. That your petitioner, as Receiver as aforesaid, has the additional unpaid obligations, incurred by him in the course of his receivership:

To G. S. Baxter & Co., 15 William St.,

New York City, for cross-ties..... \$1,060.50

To Francis G. Lloyd, Bernardsville, N.

J., for cross-ties..... 749.70

Petition and Report of Receiver and Final Account.

To James N. Pidcock, White House Station, N. J., for cow killed by locomotive on July 30, 1913.....	80.00	
To Missouri Pacific Railway Company, St. Louis, Mo., for car service.....	2.40	
To Philadelphia & Reading Railway Company, Reading Terminal, Philadelphia, Pa., for car service.....	6.41	10
To Delaware, Lackawanna & Western Railroad, 90 West St., New York City, for car service	37.35	
To Canadian Pacific Railway Company, Montreal, Canada, for printing tariffs	.86	
To Lehigh Valley Railroad Co., 228 South 3rd St., Philadelphia, Pa., for car service	11.25	
To Pennsylvania Railroad Company, Philadelphia, Pa., for car service.....	32.85	20
To Boston & Maine Railroad, Boston, Mass., for car service.....	1.35	
To Lehigh & New England Railroad, Bethlehem, Pa., for car service.....	.90	
To Central West Virginia & Southern Railroad, Hendricks, West Virginia, for car service.....	1.35	
To Chesapeake & Ohio Railway, Richmond, Va., for car service.....	1.80	30
To Macon, Dublin & Savannah Railroad Macon, Ga., for car service.....	.45	
To Louisville & Nashville Railroad, Louisville, Ky., for car service.....	1.80	
To Boston & Albany Railroad, Springfield, Mass., for car service.....	.90	
To Lake Shore & Michigan Southern Railway, Cleveland, Ohio, for car service	.45	
To Central of Georgia Railway, Savannah, Ga., for car service.....	3.15	40

Petition and Report of Receiver and Final Account.

	To Atlantic Coast Line Railroad, Wil-	
	mington, N. C., for car service.....	1.35
	To Illinois Central Railroad, Chicago,	
	Ill., for car service.....	4.95
	To Cleveland, Cincinnati, Chicago & St.	
	Louis Railway, Indianapolis, Ind., for	
10	car service	2.70
	To Erie Railroad, New York City, for	
	car service	16.65
	Total	\$2,019.12

that the amount due from your petitioner as Receiver for obligations incurred in the course of said receivership, aside from the amount due upon the receiver's certificates above mentioned, is the total of \$2,019.12 above mentioned;

20 8. That Washburn-Crosby Company at Minneapolis, Minn., has asserted a liability on the part of your petitioner as Receiver for flour destroyed by a fire at Watnong Terminal on January 24, 1913, your petitioner having been receiver since December 31, 1912; that the total amount of the claim of said Washburn-Crosby Company made to your petitioner was \$821.25; that your petitioner has disputed any liability for this claim
30 as Receiver or otherwise; that negotiations were conducted for some time for the settlement and compromise of this claim, your petitioner having made an offer to pay the sum of \$60, but that this settlement was not accepted by Washburn-Crosby Company and no communication has been had by your petitioner, or his counsel, with that company since the 3rd day of January, 1914;

40 9. That Canadian Pacific Railway Company, a corporation having its offices at Montreal, Canada, has asserted a liability on the part of your petitioner, as Receiver, of \$218.74 on account

Petition and Report of Receiver and Final Account.

of damage to a car of said company by the fire above mentioned; that your petitioner disputes any liability for this claim as Receiver or otherwise;

10. That Barker-Bond Lumber Company, a corporation, has made claim to your petitioner in the sum of \$1,067.56 on account of certain railroad ties alleged to have been stolen from said corporation and used upon the railroad line of which your petitioner is Receiver; that said use of said railroad ties is alleged to have occurred in the month of March, 1914, after your petitioner became Receiver of said railroad; that your petitioner has no knowledge of the use of said ties on said railroad line, but believes that it is claimed by said Barker-Bond Lumber Company that one Frank W. Patterson, who in the year aforesaid applied to the Court of Chancery for an order to lease said road to him, used said ties; that your petitioner disputes any liability for this claim as Receiver or otherwise;

11. That your petitioner is advised that the administration expenses in this matter, including fees and allowances for petitioner and his counsel, and the amount due on the receiver's certificates aforesaid, and the sums due to the various persons above named for obligations incurred or arising during the course of said receivership, will amount to a sum considerably in excess of the balance now in your petitioner's hands, and that your petitioner is further advised that as a result, not only the general creditors who have filed claims with your petitioner as Receiver will receive no dividend whatever on their respective claims, but not even will the encumbrancers of record, including bondholders secured by a trust mortgage, a judgment creditor, and a real estate

Petition and Report of Receiver and Final Account.

mortgagee, receive anything; that neither your petitioner, nor his counsel, since the commencement of this receivership on the 31st day of December, 1912, has had any allowance whatever for their respective services; that your petitioner is informed and advised that the allowances to
10 himself as Receiver and to his counsel, and their respective disbursements, and also the taxed costs of your petitioner's counsel in this matter constitute a first claim upon the aforesaid balance in your petitioner's hands as Receiver, in preference to any of the foregoing obligations of your petitioner incurred by him as Receiver in the administration of said receivership, whether by way of receiver's certificates or otherwise.

Your petitioner therefore prays that an order
20 may be made approving and allowing your petitioner's account as Receiver, and fixing and determining the fees and allowances of your petitioner in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and providing for the payment of said fees, allowances and costs, and further directing the distribution of any balance of the funds in the hands of said Receiver among the holder of the receiver's certificates aforesaid
30 and the various other administration creditors above mentioned; and your petitioner also prays that he may be discharged from any further duties and liabilities in connection with his said trust, and that his bond as Receiver may be declared to be cancelled and void.

Petition and Report of Receiver and Final Account.

All of which is respectfully submitted this tenth day of December, nineteen hundred and fifteen.

FREDERIC V. PITNEY,
*Receiver of the New Jersey &
 Pennsylvania Railroad Company,
 Petitioner.*

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PITNEY, HARDIN & SKINNER,
Solicitors for Petitioner.

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

Frederic V. Pitney, being duly sworn according to law, upon his oath says that he is Receiver of The New Jersey & Pennsylvania Railroad Company, and the petitioner in the foregoing petition and report named, and that the facts therein stated are true to the best of his knowledge and belief.

20

Deponent further says that the within report, audit and account attached hereto as Exhibit A contains a just and true statement and account of the monies received by him as such Receiver, or by any person or persons by his order for the account of said receivership, and that the several sums of money mentioned therein as having been paid or allowed by him were actually and truly so paid or allowed for the several purposes respectively therein mentioned, and that the said report, audit and account is in all things just and true, both as to the charge and discharge thereof, and in all other respects, to the best of his knowledge, information and belief.

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Deponent further says that the within account attached hereto as Exhibit B is a true account of

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Petition and Report of Receiver and Final Account.

the claims against the defendant company which have been presented to and allowed by deponent as Receiver.

FREDERIC V. PITNEY.

10 Subscribed and sworn to, before me,
 this tenth day of December, 1915.

 PHILANDER B. PIERSON,
 Master in Chancery of New Jersey.

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Order to Show Cause.

Order to Show Cause.

Filed December 13, 1915.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM H. JEFFERS,
Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,
Defendant.

*On Bill for
Receiver.*

*Order to
Show
Cause,*

10

Frederic V. Pitney, Receiver of the above named defendant company, heretofore appointed by this Court, having presented and filed a petition and report together with a final account of his receipts and disbursements from the date of his appointment, December thirty-first, 1912, to November seventeenth, 1915, covering the entire period of said receivership; and it appearing that the receipts of said Receiver amount to \$67,353.19 and that his disbursements amount to \$53,367.42, leaving a cash balance in his hands amounting to \$13,985.77;

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And it further appearing from said petition and report that said Receiver under authority of this Court has borrowed from the National Iron Bank of Morristown, N. J., upon receiver's certificates the sum of \$7,000, which entire principal sum is due together with interest thereon from the first day of October, 1913;

And it further appearing from said petition and report that said Receiver has the following addi-

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Order to Show Cause.

tional unpaid obligations arising or incurred in the course of his receivership:—

	To G. S. Baxter & Co., 15 William St., New York City, for cross-ties.....	\$1060.50
	To Francis G. Lloyd, Bernardsville, N. J., for cross-ties.....	749.70
10	To James N. Pidcock, White House Sta- tion, N. J., for cow killed by locomotive on July 30, 1913.....	80.00
	To Missouri Pacific Railway Company, St. Louis, Mo., for car service.....	2.40
	To Philadelphia & Reading Reailway Com- pany, Reading Terminal, Philadelphia, Pa., for car service.....	6.41
	To Delaware, Lackawanna & Western Railroad, 90 West St., New York City, for car service.....	37.35
20	To Canadian Pacific Railway Company, Montreal, Canada, for printing tariffs..	.86
	To Lehigh Valley Railroad Company, 228 South 3rd St., Philadelphia, Pa., for car service	11.25
	To Pennsylvania Railroad Company, Phila- delphia, Pa., for car service.....	32.85
	To Boston & Maine Railroad, Boston, Mass., for car service.....	1.35
30	To Lehigh & New England Railroad, Beth- lehem, Pa., for car service.....	.90
	To Central West Virginia & Southern Railroad, Hendricks, West Virginia, for car service.....	1.35
	To Chesapeake & Ohio Railway, Richmond, Va., for car service.....	1.80
	To Macon, Dublin & Savannah Railroad, Macon, Ga., for car service.....	.45
40	To Louisville & Nashville Railroad, Louis- ville, Ky., for car service.....	1.80

Order to Show Cause.

To Boston & Albany Railroad, Springfield, Mass., for car service.....	.90	
To Lake Shore & Michigan Southern Railway, Cleveland, Ohio, for car service..	.45	
To Central of Georgia Railway, Savannah, Ga., for car service.....	3.15	
To Atlantic Coast Line Railroad, Wilmington, N. C., for car service.....	1.35	10
To Illinois Central Railroad, Chicago, Ill., for car service.....	4.95	
To Cleveland, Cincinnati, Chicago & St. Louis Railway, Indianapolis, Ind., for car service.....	2.70	
To Erie Railroad, New York City, for car service	16.65	
Total.....	\$2019.12	20

And it further appearing from said petition and report that Washburn-Crosby Company of Minneapolis, Minn., has asserted a liability on the part of said Receiver for property destroyed by a fire which occurred at Watnong Terminal on January 24, 1913, after said Receiver had entered into his said office; and it further appearing that Canadian Pacific Railway Company has asserted a liability on the part of said Receiver for damage to a car of said Company by the fire above mentioned; and it further appearing that Barker-Bond Lumber Company has made claim to said Receiver on account of certain railroad ties alleged to have been stolen from said Company and used upon the railroad line of said Receiver; and it further appearing that said Receiver disputes any liability on his part for said three claims last mentioned as Receiver or otherwise;

And it further appearing from said petition and report that said Receiver is advised that the ad-

Order to Show Cause.

ministration expenses in this matter, including fees and allowances for Receiver and his counsel, and the amount due on the receiver's certificates aforesaid, and the sums due to the various persons above named for obligations incurred or arising during the course of said receivership, will amount
 10 to a sum considerably in excess of the aforesaid balance now in said Receiver's hands, and that said Receiver is further advised that as a result, not only the general creditors who have filed claims with said Receiver will receive no dividend whatever on their respective claims, but not even will the encumbrancers of record, including bondholders secured by a trust mortgage, a judgment creditor and a real estate mortgagee, receive anything; and that
 20 said Receiver is further advised that the allowances to himself as Receiver and to his counsel and their respective disbursements, and also the taxed costs of his counsel in this matter, constitute a first claim upon the aforesaid balance in said Receiver's hands in preference to any of the foregoing obligations of said Receiver incurred by him in the administration of said receivership, whether by way of receiver's certificates or otherwise;

And in such petition and report said Receiver prays that an order may be made approving and
 30 allowing his account as Receiver and fixing and determining the fees and allowances of said Receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and providing for the payment of said fees, allowances and costs, and further directing the distribution of any balance of the funds in the hands of said Receiver among the holder of the receiver's certificates aforesaid and the various other administration creditors above mentioned;
 40 and further prays that he may be discharged from any further duties and liabilities in connection with

Order to Show Cause.

his said trust, and that his bond as Receiver may be declared to be cancelled and void;

It is on this thirteenth day of December, nineteen hundred and fifteen, on motion of Pitney, Hardin & Skinner, solicitors for and of counsel with said Receiver, ORDERED that all and every of the stockholders, creditors, bondholders and mortgagees of said defendant company, and all and every of the creditors of said Receiver, and all other persons who may assert claims against him, do show cause before this Court on Tuesday, the 28th day of December, nineteen hundred and fifteen at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers in the City of Newark, why the said Receiver's said petition and report, and all the matters and things therein contained, should not be ratified and confirmed, and why his said account should not be approved and allowed, and why an order should not be made fixing and determining the fees and allowances of said Receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and providing for the payment of said fees, allowances and costs; and further why an order should not be made directing the distribution of any balance of the funds in the hands of said Receiver among the holder of the Receiver's certificates aforesaid, and the various other administration creditors of said Receiver above listed, not including, however, the three above mentioned disputed claims, and do further show cause why said Receiver should not be discharged from any further duties and liabilities in connection with said trust, and why his bond as Receiver should not be declared to be cancelled and void;

Order to Show Cause.

And it is further ordered that all and every of the persons above named, to wit, the stockholders, creditors, bondholders and mortgagees of said defendant company, and all and every of the creditors of said Receiver, and all other persons who may assert claims against him, have leave to appear
10 before said Court at the time and place aforesaid, and, if they so desire, to be heard upon the method of distribution to be ordered of the balance of the funds in the hands of said Receiver;

And it is further ordered that true copies of this order, which need not be certified, be mailed, with postage prepaid, to the said stockholders, creditors, bondholders and mortgagees of the said defendant company, and to the creditors of said Receiver, and to all other persons who may assert
20 claims against him, so far as their names and addresses are known to the said Receiver, within four days from the date hereof; and it is further ordered that a true copy of said petition and report and final account of said Receiver, which need not be certified, be served upon the National Iron Bank of Morristown, or its solicitors, within four days from the date hereof.

E. R. WALKER,
C.

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Respectfully advised,
J. E. HOWELL,
V. C.

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Order to Show Cause.

The following notice was printed at the foot of the foregoing order of December 13, 1915, and sent out to the creditors and stockholders:

To the Creditors, Stockholders, Bondholders and Mortgagees of The New Jersey & Pennsylvania Railroad Company, and to the Creditors of the Receiver of said Company, and to all other persons asserting claims against said Receiver. 10

Take notice of the provisions of the foregoing order of the Court of Chancery made on this date.

Further take notice that the final account of Frederic V. Pitney, Receiver of The New Jersey & Pennsylvania Railroad Company, has been filed in the Court of Chancery of New Jersey, and that the Receiver will ask as his allowance \$3,000, and that counsel for the Receiver will ask for an allowance of \$3,000 and taxed costs of suit. 20

Dated December 13, 1915.

PITNEY, HARDIN & SKINNER,
763 Broad Street,
Solicitors for Frederic V. Pitney, Receiver.

Opinion of Vice Chancellor.

Opinion of Vice-Chancellor Howell.

Filed February 17, 1916

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

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On motion for distribution of a fund in the hands of a Receiver.

Mr. Corwin Howell and Mr. John R. Hardin for the Receiver.

Mr. John B. Vreeland, *contra*.

Submitted December 28, 1915.

Decided February 15, 1916.

Howell, V. C.

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The New Jersey and Pennsylvania Railroad Company owned a short line of railway constructed from Whitehouse to Morristown. It became insolvent and Frederick V. Pitney was appointed Receiver in proceedings taken to wind up the affairs of the company. He found it necessary in the progress of his work to have more money than he could obtain from the ordinary transaction of the company's business, and in order to obtain funds in January, 1913, he made application to the court for leave to borrow money to the extent of \$7,000 on Receiver's certificates. Notice of the applica-

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tion appears to have been given to every one in interest by the ordinary order requiring creditors and stockholders to show cause why the petition of the Receiver should not be granted. On January 28, 1913, on the Receiver's motion it was ordered that he have authority to borrow money by the issue of Receiver's certificates of indebtedness maturing not later than twelve months from their date, and not at any one time to exceed the sum of \$7,000, carrying interest at a rate not exceeding the legal rate, which certificates of indebtedness should be a first lien on the property real and personal of the defendant company in preference to mortgage, judgment or other liens or claims thereon, except only a mortgage held by the Vail estate. In pursuance of this authority on February 14, 1913, he borrowed from a bank the sum of \$3,000, and on June 13, 1913, he borrowed from the same bank the further sum of \$4,000, for which several amounts he issued his certificates, one for \$3,000 and the other for \$4,000, which after reciting the authority given to him in that behalf, certified that he as such Receiver had received from the bank the said several sums of money to be used in the administration of his trust as such Receiver under the direction of this court, and which as such Receiver he promised to pay to the bank within twelve months with interest at the rate of six per cent. payable quarterly, out of the property of the railroad company or the proceeds thereof prior to any other debt or demand of any kind or character whatsoever. The form of the two certificates is the same, except that the junior certificate purports to be made subject to the prior certificate of \$3,000 then held by the bank. The Receiver continued to pay interest on the certificates until October 1, 1913. There is now due on them the

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Opinion of Vice Chancellor.

sum of \$7,000 with interest from the last named date.

10 In the latter part of 1914 and the early part of 1915 proceedings were taken by the bank by a petition in the administration suit to foreclose the lien held by it, and such proceedings were had therein; that on January 28, 1915, a decree was entered by which the amount due the bank was ascertained and fixed, and it was decreed that the said certificates of indebtedness were a first lien upon all the property real and personal of the defendant company in preference to any mortgage, judgment or other lien or claim thereon, excepting only taxes due to the State of New Jersey and a mortgage held by the trustees of the Vail estate.

20 It was further decreed that all the property rights, privileges, effects and franchises of the railroad company, and all its assets of any character or description whatsoever, and all the right, title and interest of said Receiver thereto should be sold by the said Receiver free and clear of any mortgage, judgment, Receiver's certificates or a lien or claim thereon, except only the taxes and mortgage herein above mentioned, to raise and satisfy the debt therein found to be due to the said bank, and
30 that out of the proceeds of the sale the Receiver should pay the said bank its debt, interest and costs, with a counsel fee of \$250. It was also provided that in case more money should be raised by the sale than should be sufficient to answer such payments such surplus money should be administered by said Receiver according to law and the further orders of this court. In pursuance of this power the Receiver sold the said property for the sum of \$28,600, out of which he paid by order of
40 this court to the treasurer of the State the sum of

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\$15,000 for taxes due it; there remains in his hands for distribution the sum of \$13,985.77.

In addition to the Receiver's certificates the Receiver is also indebted, principally to railway companies throughout the United States for car service rendered to him as such Receiver, in the sum of \$2,019.12, and claims have been made against him also for damages arising out of losses to shippers by accidents, fires and other casualties. 10

There is also pending an application by the Receiver and his counsel to fix and allow their fees, costs and expenses incurred in the administration of the assets of the defendant corporation. Notice was given to the creditors and stockholders that the receiver and his counsel would each ask for an allowance of \$3,000. This was discussed at the hearing of the motion, and no objection having been made thereto, and the court being of the opinion that the services of the receiver and his counsel were worth the amounts asked for by them, such allowances will be made, but they will be subject to such order as may be made regarding the distribution of the fund. 20

It is obvious that the Receiver has not in hand a sufficient amount of money to pay all these claims and that one or more of them will have to be abated to a considerable extent. The principal contention at the hearing of the motion was between the bank holding the Receiver's certificates on the one hand and the Receiver and his counsel on the other hand, each claiming a prior right to be paid in full out of the fund in the hands of the receiver. 30

The question of law at issue here is one which has not had very much discussion. There are but two cases in this State so far as my investigations or those of counsel go that throw any light whatever upon the subject. The first one to which I 40

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- will call attention is *Nessler vs. Industrial Land Company*, 20 Dick. 491, in which Vice Chancellor Emery seems to declare that where the fund in the Receiver's hands is not sufficient to pay all the Receiver's debts and other compensation the distribution must be pro rata upon the principle that
- 10 the claims are all and equally debts or claims which should be paid by the trust fund as expenses of the Receivership, and if the fund is not sufficient to pay all in full then they must abate pro rata. A further reason given by him is that if the receivers desire or intend to claim a preference in payment of their own compensation they must apply to the court not only for such order but also for authority to incur indebtedness which will be subject to their claim. This case was decided in 1903. No refer-
- 20 ence is made to the prior case (November, 1900) of *Chesapeake & Ohio Railway vs. Atlantic Transportation Company*, 17 Dick. 751, in which the Court of Errors & Appeals rendered a decision covering the point, and which could not have been brought to the attention of the learned Vice Chancellor who decided the *Nessler* case. In the *Chesapeake & Ohio Railway Company* case there were three classes of claims struggling for priority of payment out of the fund which was insufficient to pay them all in full. The Court of Errors and
- 30 Appeals ordered them paid in the following sequence: (1) The Receiver's allowance and the expenses of winding up the corporation, which would undoubtedly include counsel fees allowed to the receiver's counsel; (2) the franchise tax owing to the State, and (3) the liabilities other than the expenses of the receiver above mentioned incurred by the receiver in carrying on the business in the due course of the administration of its affairs.
- 40 The *Chesapeake & Ohio Railway Company* case

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seems to be a clear authority in this State for directing the payment of Receiver's fees and expenses of winding up, in preference to claims of other classes. No reasons are given in the opinion; it seems to have been taken for granted.

There are three English cases which throw light upon the question at issue. The first is *Strapp vs. Bull Sons & Co.* (1895) 2 Ch. 1; 64 L. J. Ch. 658. There a debenture holders action was brought against the company and a winding up petition was presented by an unsecured creditor. By consent an order was made in the winding up proceeding that the plaintiff in the action and the unsecured creditors should raise 5,000 pounds in order to complete certain contracts then in progress by the insolvent company, which sum was to be a first charge in pro rata to debentures, and that no further debts or liabilities should be incurred. The sum of 4,250 pounds was raised by the plaintiff and certain unsecured creditors in accordance with the order, and further liabilities were incurred by the receivers and managers for the purpose of completing the contracts. It was held that the receivers and managers were entitled to be indemnified against these liabilities out of the assets of the company in priority to the charge of 4,250 pounds. A reading of the opinion in the Court of Appeal will show that the decision was based upon the principle that further liabilities which were incurred in the face of an order to the contrary were expenses of administration which should be paid before any distribution could be made to creditors. Lord Halsbury said: "I do not concur in the idea that it ever could have been contemplated that those who were to take upon themselves the burthen of the management and receivership should be left to speculate on whether or not they would ever get paid anything.

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It was an essential part of the arrangement that some one should manage this business, and it was necessarily implied in that arrangement that those who for the benefit of all concerned, and not merely for themselves, were entering into this arrangement and were carrying it on to its completion so there
 10 should be an ultimate resulting fund capable of being divided should themselves be indemnified for what they were doing, namely, carrying on those contracts, and if you look, not at each one by itself, but at the whole of the orders as one arrangement to which all were parties and all tending to the same thing, it seems to me really to be free from doubt that that was the real meaning of the trans-
 action."

The next English case is *In re Glasdir Copper*
 20 *mines* (1906) 1 Ch. 365; 75 L. J. Ch. 109. This case is cited on the brief for the Receiver. There a receiver and manager appointed in a debenture holders action under orders of the court borrowed for preserving the property of the company certain sums which were advanced by certain of the debenture holders. The receiver gave in respect of the sums so borrowed formal charges which were declared to be "first charges" on the property, and
 30 provided that he should not be personally liable to repay the advances out of his own moneys. The property charged was sold by him and the proceeds proved to be insufficient to pay his expenses and remuneration and the sums borrowed. It was held that he was entitled to be indemnified in respect to his expenses and allowance out of the assets realized in priority to lenders claims under their charges. This case was also in the Court of Appeal, and Mr. Justice Stirling in his opinion says, speaking of the case of *Strapp vs. Bull*: "The
 40 case therefore is an authority for the proposition

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that where advances are made to a receiver and manager by a party to a debenture holders action under an order of court which directs that the sum advanced shall be a first charge on the assets in priority to the debenture holders a receiver and manager is nevertheless entitled to take his costs and expenses properly incurred out of the assets in priority to the sums advanced if it should appear that the true bargain was that the assets should be realized by the receiver and manager for the benefit of all concerned."

"In my opinion the orders were made and the securities given and taken in the expectation of all parties that by means of the money advanced the receiver will be enabled to realize the property more advantageously, that is to say, in such a way as not only to repay the advances but to pay something to the debenture holders. Things have turned out very differently, but inasmuch as the receiver, in my view, acted in the realization of the assets for the benefit of every one concerned I think that he is entitled to indemnity out of the assets in priority to those for whose benefit he was acting."

The latest and only other English case is *In re Boynton* (1910) 1 Ch. 519; 79 L. J. Ch. 247. In that case a receiver appointed by the court in a debenture holders action was on the plaintiff's application given leave to borrow on the security of a first charge on the debenture assets for the purpose of carrying on the business. Money was advanced by a bank and the receiver executed a deed giving the bank a first charge on the assets, but not expressly excluding his personal liability. The assets proved insufficient. It was held: "That the proper inference to draw from the whole transaction, being that the receiver did not intend to pledge and the bank did not rely upon his per-

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sonal credit, the assets must be applied first in paying the plaintiff's costs of action as between solicitor and client and the receiver's remuneration, and the balance paid to the bank in part discharge of their debt."

10 The same ruling was made in this country in the Federal Court of Appeals for the Fifth Circuit in Petersburg Savings and Insurance Company vs. Dellatore, 70 F. R. 643, Pennsylvania &c. Company vs. Mercantile Trust Company, 93 F. R. 60. The reasoning upon which all these cases go seems to be that the court which appoints the receiver takes into its custody the property of the insolvent company for administration for the benefit of all concerned, secured and unsecured creditors and stockholders, and that it can hardly be expected
20 that persons will be found to act as such receivers or as counsel in case there could be any doubt about their compensation or reimbursement for expenses. In the case now under consideration unless such a distribution were permitted the receiver would not only have to spend his time and labor for nothing, but might and probably would also be compelled to pay some portion of the expenses without the possibility of reimbursement.

30 But it is said on behalf of the bank that the order authorizing the borrowing of money on receiver's certificates provided that the certificates should be a first lien on the property real and personal of the defendant company in preference to any mortgage, judgment, order, liens or claim thereon, except only the Vail mortgage and taxes; that the certificates themselves contained a like provision, and that the same is embodied in the decree taken to foreclose the bank's lien under the certificates, and that having been made the subject
40 matter of judicial inquiry and decision, and having taken the form of a final judgment of a competent

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court, the right now claimed by the bank is therefore finally settled. This view leaves out of sight the fact that the bank could not realize upon the certificates held by it without an administrative proceeding carried on by some one as it was in this case carried on by the receiver, and that such administrative proceeding could not be carried on 10 without the expenditure of time and money, and that the persons administering the fund had no other place to apply to for reimbursement than to the fund itself.

I therefore think that on both principle and authority the compensation of the Receiver and his counsel and the expenses of the Receivership must be first paid in full out of the fund in the Receiver's possession, but I see no reason why the claims for car service and damages to shippers 20 should outrank the claim of the bank; they seem to me to be on a par and that as between themselves they should pro rate.

I will advise a decree in accordance with these views.

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

Filed February 23, 1916.

IN CHANCERY OF NEW JERSEY.

10	Between WILLIAM H. JEFFERS, <i>Complainant,</i>	} <i>On Bill, &c.</i> <i>Order</i> <i>Approving</i> <i>Receiver's</i> <i>Accounts and</i> <i>Discharging</i> <i>Receiver.</i>
20	<i>and</i> THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY, <i>Defendant.</i>	

20 An order to show cause having been made herein on the thirteenth day of December, nineteen hundred and fifteen, why the petition and report of the receiver and all the matters and things therein contained should not be ratified and confirmed; and why the receiver's accounts should not be approved and allowed; and why an order should not be made fixing and determining the fees and allowances of the said receiver in the administration of his trust, and fixing and determining

30 the fees, costs and allowances of his counsel, and providing for the payment of said fees, allowances and costs, and directing the distribution of any balance of the funds in the hands of said receiver among the holders of the receiver's certificates, and the various other administration

40 creditors of said receiver, listed in said order to show cause; and why said receiver should not be discharged from any further duties and liabilities in connection with said trust; and why his bond as receiver should not be declared to be cancelled and void;

Order Approving Receiver's Accounts.

And it appearing that copies of said order to show cause, together with a notice of the filing of said accounts and a statement of the allowances to be asked by said receiver and his counsel as compensation for their services, have been mailed to the stockholders, creditors, bondholders and mortgagees of the defendant company, and to the creditors of said receiver, and all other persons who may assert claims against him, so far as their names and addresses are known to said receiver, in accordance with the provisions of said order to show cause; 10

And it further appearing by the acknowledgment of Messrs. Vreeland & Wilson, solicitors for the National Iron Bank of Morristown, New Jersey, the holder of the receiver's certificates aforesaid, that service of a true copy of said petition, report and final account of the receiver, and of a true copy of the order to show cause on said petition was made upon said solicitors in accordance with the provisions of said order to show cause; 20

And it appearing that said receiver's accounts are correct and that the same ought to be allowed, and no reason appearing or being shown to the contrary;

And the Court being of the opinion that the allowance of three thousand dollars (\$3,000) asked for the receiver, and the counsel fee of three thousand dollars (\$3,000) asked for his counsel, are proper allowances, and that the services of the receiver and his counsel were worth the amounts named; and the Court having heard the argument by counsel for the receiver and counsel for the said National Iron Bank of Morristown, New Jersey, as to the priorities of payment claimed by them respectively, and having considered the 30 40

Order Approving Receiver's Accounts.

- matter, and being of opinion that the compensation of the receiver and his counsel, and the expenses of the receivership should be first paid in full out of the fund in the receiver's possession, and that the counsel fee of two hundred and fifty dollars (\$250) already allowed to Messrs.
- 10 Vreeland & Wilson, as counsel for the National Iron Bank of Morristown in these proceedings, and also their taxed costs of one hundred and thirty-four dollars and eighty-three cents (\$134.83) should be paid in full; and the court being further of the opinion that the National Iron Bank of Morristown, New Jersey, and the various other administration creditors of the receiver, listed in the order to show cause (not including, however, the claimants whose claims are disputed by
- 20 the receiver, to-wit, Washburn-Crosby Company, Canadian Pacific Railway Company and the Barker-Bond Lumber Company) should share pro rata any balance of the fund in the receiver's hands after payment of the compensation of the receiver and his counsel and the expenses of the receivership as aforesaid, and the said allowance and costs of counsel for the National Iron Bank of Morristown.

- And it appearing that the receipts of said receiver have amounted to the sum of sixty-seven thousand three hundred and fifty-three dollars and nineteen cents (\$67,353.19), and that the payments and disbursements by him have amounted to the sum of fifty-three thousand three hundred and sixty-seven dollars and forty-two cents (\$53,367.42), leaving a cash balance in his hands amounting to thirteen thousand nine hundred and eighty-five dollars and seventy-seven cents (\$13,985.77), which balance has been slightly
- 40 increased by the crediting of interest thereon by

Order Approving Receiver's Accounts.

the bank in which said sum is deposited, since the filing of said account; and it further appearing that the disbursements of counsel for the receiver, made on account of said receivership and not included in the taxed costs of suit, amount to the sum of seventy-nine dollars and eighty cents (\$79.80), and that the disbursements of said receiver for which he has not been reimbursed amount to the sum of thirteen dollars and ninety cents (\$13.90); 10

It is thereupon, on this 23rd day of February, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, of counsel with said receiver, ordered, adjudged and decree that the accounts file by said receiver in said cause be and the same are hereby approved, allowed and confirmed; 20

It is further ordered that said receiver do pay to himself from the aforesaid balance in his hands the sum of three thousand dollars (\$3,000) as and for his compensation for his services as receiver in this cause, and also the said sum of thirteen dollars and ninety cents (\$13.90) for the aforesaid disbursements made by him, and that he do pay to Messrs. Pitney, Hardin & Skinner, the sum of three thousand dollars (\$3,000) as and for their counsel fee in this cause, and also the said sum of seventy-nine dollars and eighty cents (\$79.80) for the disbursements made by Pitney, Hardin & Skinner as aforesaid, and also the costs of the complainant and of the receiver in this cause to be taxed by the Clerk of this Court, and do further pay to Messrs. Vreeland & Wilson, solicitors for and of counsel with the National Iron Bank of Morristown, New Jersey, their said counsel fee of two hundred and fifty dollars (\$250) and their said taxed costs of one hundred and thirty-four dollars and eighty-three cents (\$134.83); 30 40

Order Approving Receiver's Accounts.

And it is further ordered that said receiver, after paying and satisfying the above allowances, counsel fees, disbursements and costs, do pay and disburse to the administration creditors named in the following list, or to their several and respective solicitors, all of the surplus remaining in the receiver's hands, pro rata, in proportion to the amounts set after their respective names:

	(1) National Iron Bank of Morristown, New Jersey, for amount of receiver's certificates, \$7,000 and interest thereon from Oct. 1, 1913	\$7999.72
	(2) G. S. Baxter & Co., 15 William St., New York City, for cross-ties...	1060.50
10	(3) Francis G. Lloyd, Bernardsville, N. J., for cross-ties.....	749.70
20	(4) James N. Pidcock, White House Station, N. J., for cow killed by locomotive on July 30, 1913.....	80.00
	(5) Missouri Pacific Railway Company, St. Louis, Mo., for car service...	2.40
	(6) Philadelphia & Reading Railway Company, Reading Terminal, Philadelphia, Pa., for car service	6.41
30	(7) Delaware, Lackawanna & Western Railroad, 90 West St., New York City, for car service.....	37.35
	(8) Canadian Pacific Railway Company, Montreal, Canada, for printing tariffs	.86
	(9) Lehigh Valley Railroad Co., 228 South 3rd St., Philadelphia, Pa., for car service	11.25
40	(10) Pennsylvania Railroad Company, Philadelphia, Pa., for car service	32.85

Order Approving Receiver's Accounts.

(11) Boston & Maine Railroad, Boston, Mass., for car service.....	1.35	
(12) Lehigh & New England Railroad, Bethlehem, Pa., for car service..	.90	
(13) Central West Virginia & Southern Railroad, Hendricks, West Virginia, for car service.....	1.35	10
(14) Chesapeake & Ohio Railway, Richmond, Va., for car service.....	1.80	
(15) Macon, Dublin & Savannah Railroad, Macon, Ga., for car service.....	.45	
(16) Louisville & Nashville Railroad, Louisville, Ky., for car service..	1.80	
(17) Boston & Albany Railroad, Springfield, Mass., for car service.....	.90	
(18) Lake Shore & Michigan Southern Railway, Cleveland, Ohio, for car service	.45	20
(19) Central of Georgia Railway, Savannah, Ga., for car service.....	3.15	
(20) Atlantic Coast Line Railroad, Wilmington, N. C., for car service...	1.35	
(21) Illinois Central Railroad, Chicago, Ill., for car service.....	4.95	
(22) Cleveland, Cincinnati, Chicago & St. Louis Railway, Indianapolis, Ind., for car service.....	2.70	30
(23) Erie Railroad, New York City, for car service	16.65	
Total	\$10018.84	

And it further appearing that the three aforesaid alleged liabilities of the receiver, to-wit, to Washburn-Crosby Company, for an alleged liability of the receiver for property destroyed by a fire which occurred at Watnong Terminal on January 24, 1913; to Canadian Pacific Railway Com-

Order Approving Receiver's Accounts.

pany, for an alleged liability on the part of said receiver for damage to a car of said company by the fire above mentioned, and to Barker-Bond Lumber Company on account of certain railroad ties alleged to have been stolen from said Barker-Bond Lumber Company and used upon the railroad line of the defendant company, which claims are set forth in said order to show cause, are disputed by said receiver; and it appearing that said order to show cause recited the fact that said receiver disputed any liability on his part for said three claims last mentioned as receiver, or otherwise, and ordered all persons who may assert claims against the said receiver to show cause why an order should not be made directing the distribution of any balance of the funds in the hands of said receiver, among the holder of the receiver's certificates and the various other administration creditors of said receiver, not including, however, the three above mentioned disputed claims; and it further appearing that none of said three last named claimants appeared upon the return day of said order to show cause, although as appears from the proof of mailing filed herein as aforesaid, true copies of said order to show cause were duly mailed to each of the same at their last known post office addresses;

It is ordered that said Washburn Crosby Company, Canadian Pacific Railway Company, and Barker-Bond Lumber Company shall have no share in the balance of said funds in the receiver's hands;

And it is further ordered that the said receiver file with the Clerk of this Court a statement and report of the distribution and disposition of the monies now in his hands as receiver as aforesaid, and in case the receiver shall be unable to comply

Order Approving Receiver's Accounts.

with the directions of this order in the payment or disbursement of any of the monies aforesaid, he shall in such case deposit such monies with the Clerk of this Court;

And it is further ordered, adjudged and decreed that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree the said receiver be discharged from all obligations, duties and liabilities in relation to said trust, and that upon making the payments and disbursements aforesaid and carrying out the directions of this decree, the bond of the said receiver shall be void, cancelled and of no further force and effect. 10

E. R. WALKER,

C. 20

Respectfully advised,

J. E. HOWELL,

V. C.

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*Order Amending Order Approving Receiver's
Accounts.*

Order Amending Order of February 23, 1916.

Filed February 26, 1916.

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

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*On Bill for
Receiver, &c.*

*Order
Amending*

*Order
Approving*

*Receiver's
Accounts and*

*Discharging
Receiver.*

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It appearing to the court that an order was made in the above entitled cause on the twenty-third day of February, nineteen hundred and sixteen, approving the accounts of the receiver herein and discharging the receiver, and directing the receiver, among other things, to pay to himself from the balance in his hands the sum of thirteen dollars and ninety cents (\$13.90) for certain disbursements made by him; and it appearing that a further disbursement of twenty dollars (\$20) has been made by said receiver for which he should be reimbursed;

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It is thereupon on this 26th day of February, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, solicitors for the said receiver, ordered that the above mentioned order made in this cause on the twenty-third day of February, nineteen hundred and sixteen, be and the same is hereby amended so as to permit the receiver to pay to himself, in addition to the sums

*Order Amending Order Approving Receiver's
Accounts.*

mentioned in said order dated February twenty-third, nineteen hundred and sixteen, from the aforesaid balance in his hands said sum of twenty dollars (\$20) to reimburse said receiver for the disbursement of that amount made by him as aforesaid.

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E. R. WALKER,

C.

Respectfully advised,

J. E. HOWELL,

V. C.

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*Notice of Appeal.***Notice of Appeal.**

Filed March 8, 1916.

IN CHANCERY OF NEW JERSEY.

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

*Defendant.**On Bill, &c.**Notice of
Appeal of the
National Iron
Bank of
Morristown,
New Jersey.*

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The National Iron Bank of Morristown, New Jersey, hereby appeals to the Court of Errors and Appeals, the last resort in all cases, from so much of the final order made in the Court of Chancery of New Jersey, by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date February 23rd, 1916, where William H. Jeffers is complainant and The New Jersey and Pennsylvania Railroad Company is defendant, as

30 adjudged that Frederic V. Pitney, the receiver of the defendant company, should pay to himself, from the balance of \$13,985.77 in his hands, the sum of \$3,000.00, as and for his services as such receiver, and that he should pay to Messrs. Pitney, Hardin & Skinner the sum of \$3,000.00 as and for their counsel fee in the cause, and that the said receiver, after paying the above allowances and counsel fees and certain other items therein

40 enumerated, should pay and disburse to the following administration creditors, or to their respective solicitors, all of the surplus remaining

Notice of Appeal.

in the receiver's hands, pro rata, in proportion to their several amounts, to-wit:

(1) National Iron Bank of Morristown, New Jersey, for amount of receiver's certificates, \$7,000, and interest thereon from Oct. 1, 1913.	\$7999.72	
(2) G. S. Baxter & Co., 15 William St., New York City, for cross-ties....	1060.50	10
(3) Francis G. Lloyd, Bernardsville, N. J., for cross-ties	749.70	
(4) James N. Pidcock, White House Station, N. J., for cow killed by locomotive on July 30, 1916.....	80.00	
(5) Missouri Pacific Railway Company, St. Louis Mo., for car service....	2.40	
(6) Philadelphia & Reading Railway Company, Reading Terminal, Philadelphia, Pa., for car service	6.41	20
(7) Delaware, Lackawanna & Western Railroad, 90 West Street, New York City, for car service.....	37.35	
(8) Canadian Pacific Railway Company, Montreal, Canada, for printing tariffs	.86	
(9) Lehigh Valley Railroad Co., 228 South 3rd St., Philadelphia, Pa., for car service	11.25	30
(10) Pennsylvania Railroad Company, Philadelphia, Pa., for car service	32.85	
(11) Boston & Maine Railroad, Boston, Mass., for car service.....	1.35	
(12) Lehigh & New England Railroad, Bethlehem, Pa., for car service...	.90	
(13) Central West Virginia & Southern Railroad, Hendricks, West Virginia, for car service.....	1.35	40

Notice of Appeal.

	(14) Chesapeake & Ohio Railway, Richmond, Va., for car service.....	1.80
	(15) Macon, Dublin & Savannah Railroad, Macon, Ga., for car service.....	.45
	(16) Louisville & Nashville Railroad, Louisville, Ky., for car service...	1.80
10	(17) Boston & Albany Railroad, Springfield, Mass., for car service.....	.90
	(18) Lake Shore & Michigan Southern Railway, Cleveland, Ohio, for car service	.45
	(19) Central of Georgia Railway, Savannah, Ga., for car service.....	3.15
	(20) Atlantic Coast Line Railroad, Wilmington, N. C., for car service...	1.35
	(21) Illinois Central Railroad, Chicago, Ill., for car service.....	4.95
20	(22) Cleveland, Cincinnati, Chicago & St. Louis Railway, Indianapolis, Ind., for car service.....	2.70
	(23) Erie Railroad, New York City, for car service	16.65
Total		\$10018.84

VREELAND & WILSON,
Solicitors of Appellant.

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JOHN B. VREELAND,
Of Counsel.

Dated March 17th, 1916.

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

JOHN B. VREELAND,
Of Counsel with Appellant.

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Notice of Appeal.

A true copy,

ROBERT H. McADAMS,
Clerk.

Service of a copy of the Notice of Appeal of
which this is a like copy hereby acknowledged this
23rd day of March, A. D. 1916. 10

PITNEY, HARDIN & SKINNER,
*Solicitors for William H. Jeffers, Complain-
ant, Frederic V. Pitney, Receiver of the New
Jersey and Pennsylvania Railroad Company,
and ourselves.*

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Petition of Appeal.

Petition of Appeal.

Filed April 5, 1916.

New Jersey Court of Errors and Appeals

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

On Bill, &c.

Petition

Of Appeal.

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

The humble petition of the National Iron Bank
of Morristown, New Jersey, the appellant in the
above stated case, respectfully shows that your
petitioner finds itself aggrieved by a final order
made in the Court of Chancery by his Honor
Edwin Robert Walker, Chancellor, of New Jersey,
30 bearing date February 23rd, A. D. 1916, wherein
William H. Jeffers was complainant and The New
Jersey and Pennsylvania Railroad Company was
defendant in this report, to wit: that the said
decree adjudged that Frederic V. Pitney, the
receiver of the defendant company should pay
to himself from the balance of \$13,985.77 in his
hands the sum of \$3,000.00 as and for his com-
pensation for his services as receiver, and that
40 he should pay to Messrs. Pitney, Hardin & Skin-
ner the sum of \$3,000.00 as and for their counsel

Petition of Appeal.

fee in the cause, and did further adjudge that the said receiver, after paying the above allowances and counsel fees and certain other items therein enumerated, should pay and disburse to the following administration creditors, or to their respective solicitors, all of the surplus remaining in the receiver's hands pro rata in proportion to their several amounts, to wit: 10

(1) National Iron Bank of Morristown, New Jersey, for amount of receiver's certificates, \$7,000, and interest thereon from Oct. 1, 1913..	\$7999.72	
(2) G. S. Baxter & Co., 15 William St., New York City, for cross-ties....	1060.50	
(3) Francis G. Lloyd, Bernardsville, N. J., for cross-ties.....	749.70	20
(4) James N. Pidcock, White House Station, N. J., for cow killed by locomotive on July 30, 1913.....	80.00	
(5) Missouri Pacific Railway Company, St. Louis, Mo., for car service...	2.40	
(6) Philadelphia & Reading Railway Company, Reading Terminal, Philadelphia, Pa., for car service	6.41	
(7) Delaware, Lackawanna & Western Railroad, 90 West St., New York City, for car service.....	37.35	30
(8) Canadian Pacific Railway Company, Montreal, Canada, for printing tariffs	.86	
(9) Lehigh Valley Railroad Co., 228 South 3rd St., Philadelphia, Pa., for car service	11.25	
(10) Pennsylvania Railroad Company, Philadelphia, Pa., for car service	32.85	
(11) Boston & Maine Railroad, Boston, Mass., for car service.....	1.35	40

Petition of Appeal.

	(12) Lehigh & New England Railroad, Bethlehem, Pa., for car service..	.90
	(13) Central West Virginia & Southern Railroad, Hendricks, West Vir- ginia, for car service.....	1.35
10	(14) Chesapeake & Ohio Railway, Rich- mond, Va., for car service.....	1.80
	(15) Macon, Dublin & Savannah Rail- road, Macon, Ga., for car service	.45
	(16) Louisville & Nashville Railroad, Louisville, Ky., for car service..	1.80
	(17) Boston & Albany Railroad, Spring- field, Mass., for car service.....	.90
	(18) Lake Shore & Michigan Southern Railway, Cleveland, Ohio, for car service	.45
20	(19) Central of Georgia Railway, Sa- vannah, Ga., for car service....	3.15
	(20) Atlantic Coast Line Railroad, Wil- mington, N. C., for car service..	1.35
	(21) Illinois Central Railroad, Chicago, Ill., for car service.....	4.95
	(22) Cleveland, Cincinnati, Chicago & St. Louis Railway, Indianapolis, Ind., for car service.....	2.70
30	(23) Erie Railroad, New York City, for car service	16.65
	Total	\$10018.84

And your petitioner humbly appeals from that part of the order of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the amount due your petitioner on the Receiver's certificates held by it and referred to in the foregoing schedule ought to have been first ordered paid out of the balance in the Receiver's hands before the payment of any al-

Petition of Appeal.

lowance to the Receiver for services or to his counsel for services; and for that the claims of the administration creditors should not be equal in priority to your petitioner's claim but should be subject and subsequent thereto; and for that the lien of the Receiver's certificates held by your petitioner is prior to the allowances to the Receiver and his counsel and to the claims of the administration creditors. 10

Your petitioner therefore prays that the said order of the said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

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National Iron Bank of Morristown, New Jersey.

By PHILANDER B. PIERSON, Vice President.

[L. S.]

VREELAND & WILSON,
Solicitors of Appellant.

Attest:

LEWIS D. KAY,
Cashier.

JOHN B. VREELAND,
Of Counsel with Appellant.

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

JOHN B. VREELAND,
Of Counsel with Appellant.

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*Acknowledgment of Service.***Acknowledgment of Service of Petition
of Appeal.**

Filed April 10, 1916.

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

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Between

WILLIAM H. JEFFERS,

*Complainant,**and*THE NEW JERSEY & PENNSYLVANIA
RAILROAD COMPANY,

20

*Defendants.**On Petition of
Appeal.**Acknowledg-
ment of
Service of
Copy of
Petition.*

We hereby acknowledge service of a certified copy of the petition of appeal of the National Iron Bank of Morristown, New Jersey, Appellant, from an order of the Court of Chancery of New Jersey, filed April fifth, Nineteen Hundred and Sixteen.

Dated April 10th, A. D. 1916.

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PITNEY, HARDIN & SKINNER,

Attorneys for William H. Jeffers, Complainant, Frederic V. Pitney, Receiver of the New Jersey and Pennsylvania Railroad Company, and Ourselves.

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Answer to Petition of Appeal.

Answer to Petition of Appeal.

(Filed May 3, 1916).

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

WILLIAM H. JEFFERS,

Complainant,

and

THE NEW JERSEY & PENNSYLVANIA RAILROAD COMPANY,

Defendant.

NATIONAL IRON BANK, OF MORRISTOWN,

Appellant,

and

FREDERIC V. PITNEY, receiver and others,

Respondents.

*On Appeal
from
Chancery.*

Answer.

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The answer of the above named respondents to the petition of appeal of the above named appellant:

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These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that an order was, on the 23rd day of February, 1916, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents

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Answer to Petition of Appeal.

are advised and believe that the said order is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

PITNEY, HARDIN & SKINNER,
Solicitors for Respondents.

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