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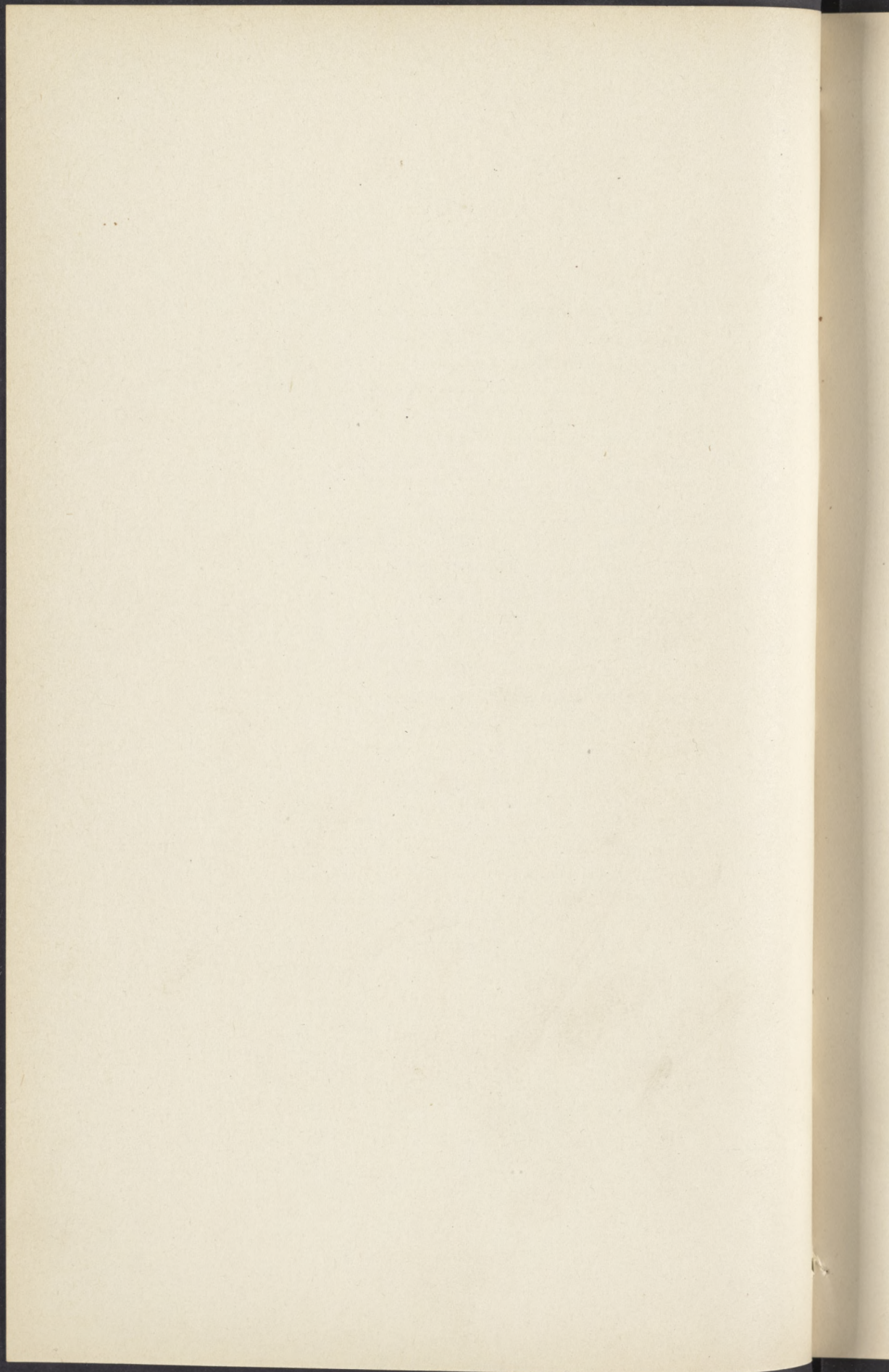
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Writ of Certiorari.

New Jersey Supreme Court

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors,*

10

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners,  
trading as KEPPLER & COM-  
PANY, and CLARENCE MABIE,  
*Respondents.*

20

New Jersey, to wit:

The State of New Jersey to Newton H.  
Porter, Circuit Court Judge; Emil A.  
C. Keppler and Max H. Keppler,  
(Seal) trading as Keppler & Company, and  
Clarence Mabie:

GREETING: L. S.

We, being willing for certain reasons to be  
certified of certain proceedings and order given or  
made before the Circuit Court of the County of  
Bergen by Newton H. Porter, Circuit Court Judge,  
dated December 31, 1926, and a certain action or  
proceeding in attachment brought against Charles  
W. Owen at the suit of Robert A. Altschuler, in  
which as appears, by the order aforesaid made and  
signed by the said Newton H. Porter, the appoint-  
ment of said auditor was vacated and the lien and  
levy on certain property were set aside, and the  
said Robert A. Altschuler was restrained from  
further proceeding in said cause:

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*Writ of Certiorari.*

10 We command you, Newton H. Porter, Circuit Court Judge, holding said Bergen County Circuit Court, as we have before commanded you, that the said order of December 31, 1926, and all proceedings in the aforesaid attachment action brought in said Bergen County Circuit Court by the said Robert A. Altschuler against Charles W. Owen, together with all things touching and concerning the same as fully and entirely before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the 14th day of November, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

20 WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this 25th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-seven.

EDWARD J. KELLEHER,  
Clerk.

REX B. ALTSCHULER,  
Attorney for Prosecutors.

(Endorsed) :

30 Service is hereby acknowledged  
Oct. 27, 1927.

CLARENCE MABIE  
Auditor

Oct. 28, 1927.

SIDNEY W. ELDRIDGE  
Atty. Keppler Co.

40 Service is hereby acknowledged  
Nov. 3, 1927.

NEWTON H. PORTER  
Circuit Court Judge

**Affidavit of Robert A. Altschuler.**

**BERGEN COUNTY CIRCUIT COURT.**

ROBERT A. ALTSCHULER, <i>Plaintiff,</i>  <i>v.</i>  CHARLES W. OWEN, <i>Defendant.</i>	}	In Attachment.	10
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State of New Jersey, }  
 County of Bergen, } ss.:

ROBERT A. ALTSCHULER, being duly sworn according to law upon his oath says that Charles W. Owen is indebted to deponent in the sum of \$5,512.50 and deponent verily believes that the said Charles W. Owen absconds from his creditors and is not, to his knowledge or belief, resident of this State at the present time.

ROBERT A. ALTSCHULER.

Sworn and subscribed to before me }  
 this 9th day of August, 1926. }

REX B. ALTSCHULER,  
 Master in Chancery  
 of New Jersey.

**Writ of Attachment.**

BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER

*v.*

CHARLES W. OWEN.

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Inventory and appraisalment of the rights and credits, moneys and effects, goods and chattels, land and tenements of the defendant, made by virtue of the above stated writ on the 10th day of August, 1926, at the hour of 12 P. M. o'clock by George P. Nimmo, Sheriff of Bergen County, and William H. Bratt a discreet and impartial freeholder of said County, to wit:

We did on the above day and date attach the right, title and interest of Chas. W. Owen consisting of twenty shares of the United Bond and Mortgage at \$100.00 par value, at the office of the United Bldg. and Loan on State St., Hackensack, N. J. Copy of the attachment with Mr. Holley.

30

1. Active Membership Certificate in Hackensack Golf Club and valued the same in Five Hundred (\$500.) Dollars.

LOUIS TURRO,  
Deputy Sheriff.  
WILLIAM H. BRATT,  
Freeholder.

40

*Writ of Attachment.*

State of New Jersey, }  
County of Bergen, } ss.:

I, GEORGE P. NIMMO, Sheriff of said County, do hereby deputize and appoint Louis Turro to be my Special Deputy to execute and return the within writ according to law. 10

Witness my hand and seal this tenth day of August, A. D. 1926.

GEORGE P. NIMMO,  
Sheriff (LS)

Bergen County, ss.:

The State of New Jersey to our Sheriff of our County of Bergen: Greeting. 20

We command you that you attach the (Seal) rights and credits, monies and effects, goods and chattels, lands and tenements, of Charles W. Owen, wheresoever they may be found in your County, so that they be and appear before our Circuit Court to be holden at Hackensack in and for said County of Bergen on the 14th day of September, next, to answer Robert A. Altschuler in an action upon contract to the damage of the said Robert A. Altschuler of \$5,512.50 as is said. And in what manner you shall execute this, our writ, make appear to us on the day and place aforesaid; and have you then and there this writ. 30

Witness Newton D. Porter, Esquire, Judge of our said Circuit Court at Hackensack aforesaid, the 10th day of August, 1926.

REX B. ALTSCHULER  
Attorney.

IRVING T. BRICKELL,  
Clerk. 40

**Return.**

By virtue of the writ of attachment hereto annexed on Tuesday, the tenth day of August A. D. 1926, at 12 A. M. of that day in the presence of William H. Bratt, a creditable person, I, George P. Nimmo, Sheriff of the County of Bergen, executed the within writ of attachment by going to the property of Charles W. Owen at the United Building & Loan Co. State St., Hackensack, N. J. and attached his shares to the value of Two thousand dollars (\$2,000.) and by going to the Hackensack Golf Club, Central Avenue, Hackensack, N. J. and attaching the certificate of membership of the defendant, Charles W. Owen to the value of Five Hundred dollars and then and there in the presence of the said William H. Bratt, freeholder, I declared that I attached the rights and credits, monies and effects, goods and chattels, lands and tenements of Charles W. Owen, defendant at the suit of Robert A. Altschuler, plaintiff.

GEORGE P. NIMMO,  
Sheriff.

J. A. W. DONALDSON,  
Under Sheriff.

LOUIS TURRO,  
Deputy Sheriff.

August 10, 1926, 9:00 A. M.

Endorsed:

Affidavit filed for \$5,512.50 before issuing this writ.

IRVING T. BRICKELL,  
Clerk.

*Order Appointing Auditor.*

(Endorsed) :

Recorded in Book No. 3 of Attachments for Bergen County, page 56,

Aug. 10, 1926.

IRVING T. BRICKELL,  
Clerk.

10

George P. Nimmo, Sheriff  
J. A. W. Donaldson,  
Under Sheriff  
Bergen County—Hackensack, N. J.  
Sheriff's Fees \$6.00**Order Appointing Auditor.**

20

BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER,  
*Plaintiff,**v.*CHARLES W. OWEN,  
*Defendant.*

} In Attachment.

30

It appearing that a certain writ of attachment has been duly issued out of the Circuit Court in and for Bergen County in the above stated action directed to the Sheriff of the County of Bergen, tested the 10th day of August, 1926, and returnable on the 14th day of September, 1926, and that in pursuance thereof, a certain attachment and levy has been made upon certain rights and credits, consisting of ten (10) shares of stock of the United Bond & Mortgage Company of Hackensack, N. J. and one (1) Active Membership Certificate of the

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*Order Appointing Auditor.*

Hackensack Golf Club, the property of said defendant, Charles W. Owen, situate in the City of Hackensack, Bergen County and State of New Jersey; and application being now made for an order of publication and the appointment of an auditor to adjust and ascertain the amount due to the plaintiff and each of the applying creditors, if any, under "An Act for the Relief of Creditors against Absent, fraudulent and absconding debtors (revision 1901)"; and

It appearing that the Sheriff has made a return of said writ to this Court and no appearance having been entered in the cause by the defendant.

It is therefore on this 14th day of September, 1926 Ordered that a notice of the issuing of the attachment be published in the manner prescribed by statute once a week for four successive weeks in Bergen Evening Record published at Hackensack in this State, and that a copy of said notice be mailed to the defendant at his last known address; and it is further ordered that Arthur L. Robinson, Esquire, of Hackensack, be and is hereby appointed Auditor to adjust and ascertain the amount due to the plaintiff and each of the applying creditors, if any.

On motion of

REX ALTSCHULER,  
Attorney of Plaintiff.

Let the above rule be entered on the minutes.

NEWTON H. PORTER,  
Judge.

(Endorsed):

Filed Sept. 14, 1926,

IRVING T. BRICKELL,  
Clerk.

**Affidavit of John M. Wilson.**

BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER,  
*Plaintiff,*

*v.*

CHARLES W. OWEN,  
*Defendant.*

} In Attachment. 10

State of New York,  
City and County of New York, } ss.:

JOHN M. WILSON, being by me duly sworn, on his oath doth depose and say, that he is the President of the National Supply Company of Texas, a corporation of the State of Texas, and is the agent of the said The National Supply Company of Texas, in this matter, and has personal knowledge of the matters contained in this affidavit. 20

And this deponent further saith that Charles W. Owen, the above named defendant, owes to the said The National Supply Company of Texas, a debt the amount whereof is Two Thousand eight 30

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*Affidavit of John M. Wilson.*

hundred and thirty-eight dollars and twelve cents  
(\$2, 838.12).

JOHN M. WILSON.

Sworn and subscribed before me a  
10 Notary Public in and for said City,  
County and State of New York, at  
the City of New York, in said Coun-  
ty and State of New York, the 26th  
day of October, 1926. Witness my  
hand and official seal.

(Seal)

JEAN L. PRICE,

Notary Public in and for the City,  
County and State of New York.

20 Notary Public, N. Y. Co. Clerk's No. 167.  
N. Y. Co. Register's No. 7014.  
My commission expires March 30, 1927.

(Endorsed) :

Filed Nov. 9, 1926,  
IRVING T. BRICKELL,  
County Clerk.

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## Petition.

## BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER,  
*Plaintiff,*

*v.*

CHARLES W. OWEN,  
*Defendant.*

Action at Law.  
In Attachment.

10

To the Honorable NEWTON H. PORTER, Judge of the  
Bergen County Circuit Court:

The petition of Emil A. C. Keppler and Max H. Keppler, partners doing business under the firm name and style of Keppler & Co. and Clarence Mabie, Auditor, duly appointed as hereinafter stated, shows unto your Honor that:

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1. On the 3rd day of August, 1926, said Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, caused to be issued out of the New Jersey Supreme Court a writ of attachment against the rights and credits, moneys and effects, goods and chattels, land and tenements of Charles W. Owen, an absconding and non-resident debtor, for fifty-eight thousand eight hundred forty dollars and eighty-eight (\$58,840.88) cents, returnable on the 23rd day of August, 1926, and directed to the Sheriff of the County of Bergen.

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2. On the 5th day of August, 1926, George P. Nimmo, Esquire, Sheriff of the County of Bergen, under and by virtue of said writ of attachment, levied upon, seized and attached certain lands and tenements, goods and chattels of the said defendant, and before the return day of said writ, on or

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*Petition.*

before the 13th day of August, 1926, sent the aforesaid writ of attachment, with his return thereto annexed, to the Clerk of said Supreme Court at Trenton, and the same was filed by said Clerk on said 13th day of September, 1926.

10        3. The levy and attachment so made, as set forth in the paragraph last above, was totally inadequate to satisfy the claims of these petitioners.

4. On the 10th day of August, 1926, one Robert A. Altschuler caused a writ of attachment to be issued out of the Circuit Court of the County of Bergen against the rights and credits, moneys and effects, goods and chattels, lands and tenements of the Charles W. Owen, aforesaid, returnable on 20        the 14th day of September, 1926, for the sum of five thousand five hundred twelve dollars and fifty (\$5,512.50) cents, directed to the Sheriff of the County of Bergen.

5. On the 10th day of August, 1926, George P. Nimmo, Sheriff of said County of Bergen, by virtue of the writ of attachment last aforesaid, attempted to levy upon, seize and attach as the property of the said Charles W. Owen twenty (20) shares of the capital stock of United Bond & Mortgage Com- 30        pany, a corporation of the State of New Jersey, having its principal office at Hackensack, in this State, of the par value of One Hundred (\$100) Dollars and also a certain certificate of active membership in Hackensack Golf Club, and thereafter returned said writ of attachment with his return thereon endorsed in words as follows:

40                    "Executed the within writ of attachment by going to the property of Charles W. Owen at the United B. & L. Company, State

*Petition.*

St., Hackensack, N. J. and attaching his shares to the value of Two thousand (\$2,000) dollars, and by going to the Hackensack Golf Club, Central Ave., Hackensack, N. J. and attaching the certificate of membership of the defendant, Charles W. Owen, to the value of five hundred (\$500) dollars, and then and there, in the presence of the said William Bratt, freeholder, I did declare that I attached the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Owen, defendant, at the suit of Robert A. Altshuler, Plaintiff. 10

6. By its order dated August 26, 1926, the New Jersey Supreme Court on the application of these petitioners, Emil A. C. Keppler and Max H. Keppler, plaintiffs, appointed your petitioner, Clarence Mabie, auditor in said Supreme Court action, to adjust and ascertain the amounts due the plaintiffs and each of the applying creditors, he to have all the powers and be subject to all the duties as by the statute in such case made and provided. 20

7. On the 26th day of August, 1926, your petitioners, Emil A. C. Keppler and Max H. Keppler, partners, trading as aforesaid, caused an alias writ of attachment to issue out of said Supreme Court, returnable on the 15th day of September, 1926, directed to the Sheriff of Bergen County, commanding him, as he had theretofore been commanded, to attach the rights and credits, moneys and effects, goods and chattels, lands and tenements, of the aforesaid Charles W. Owen, for the sum of fifty-eight thousand eight hundred forty dollars and eighty-eight (\$58,840.88) cents aforesaid. 30 40

*Petition.*

10 8. On the 31st day of August, 1926, by virtue of the alias writ aforesaid, George P. Nimmo, Sheriff as aforesaid, levied upon, seized and attached as the property of the said Charles W. Owen the certificate for the twenty (20) shares of the capital stock of the aforesaid United Bond & Mortgage Company, issued by said company to the said Charles W. Owen, in accordance with the requirements of the statute in such case made and provided, which said certificate was surrendered to the United Bond & Mortgage Company, the company issuing the same, and is now in the possession of said company, subject to the rights of your petitioners therein.

20 9. By an order of this court made on the 14th day of September, 1926, in the above entitled action, one Arthur L. Robinson, was at the instance of the plaintiff, Robert A. Altschuler, appointed auditor.

30 10. Your petitioner, Clarence Mabie, is entitled to the possession of the certificate for the said twenty (20) shares of the capital stock of United Bond and Mortgage Company and has made demand upon said company for the delivery of said certificate to him, but such delivery has been refused on the ground that said certificate is still subject to the alleged attachment made under the junior writ of attachment issued out of this Court at the instance of the said Robert A. Altschuler, and to the rights of the said Arthur L. Robinson, Esquire, the auditor appointed in said Circuit Court suit.

40 11. These petitioners, Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, have proceeded expeditiously with the prosecution of their

*Petition.*

said Supreme Court action, and your petitioner, Clarence Mabie, has likewise diligently proceeded with the performance of his duties as such auditor, and that no creditors have applied for the benefit of the writ of attachment issued out of the said Circuit Court at the instance of the said Robert A. Altschuler. 10

In consideration of the foregoing, your petitioners pray that the writ of attachment issued out of the Bergen County Circuit Court at the instance of the said Robert A. Altschuler, as aforesaid, may be quashed, or that the same may be vacated as to the aforesaid twenty (20) shares of stock of the United Bond & Mortgage Company and the certificate of active membership in Hackensack Golf Club, or that the levy under said writ and the lien thereof may be postponed to the levy made under the prior writ issued out of the New Jersey Supreme Court at the instance of your petitioners, Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, and that all proceedings in said Circuit Court action, including the order appointing said Arthur L. Robinson auditor as aforesaid, may be vacated and set aside and the further prosecution of said Circuit Court suit by the said Robert A. Altschuler may be restrained; and that the said United Bond & Mortgage Company, its officers and agents, may be required to surrender up and deliver to your petitioner, Clarence Mabie, the certificate for the twenty (20) shares of stock of said company in its possession as aforesaid, or that the said Robert A. Altschuler, and the said Arthur L. Robinson, may be required to consent to the delivery of said certificate to your petitioner, Clarence Mabie; and that your petitioners may have 20  
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*Petition.*

such other and further relief as may be justified  
by the facts and circumstances of the case.

And your petitioners will ever pray, etc.

SIDNEY W. ELDRIDGE,  
Attorney of Petitioners.

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State of New Jersey, }  
County of Union, } ss.:

SIDNEY W. ELDRIDGE, being duly sworn upon his  
oath, according to law, deposes and says that he  
is the attorney of the petitioners named in the  
foregoing petition, that he has read said petition  
and is familiar with the facts therein contained,  
and that the matters and things in said petition  
set forth are true.

20

SIDNEY W. ELDRIDGE.

Sworn and subscribed to before me }  
this 1st day of October, 1926. }

HENRY S. WALDMAN,  
An Attorney at Law  
of New Jersey.

(Endorsed):

30

Filed Oct. 4, 1926  
IRVING T. BRICKELL  
County Clerk

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**Rule to Show Cause.**

BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	Action at Law.	
<i>v.</i>		In Attachment.	10
CHARLES W. OWEN, <div style="text-align: right;"><i>Defendant.</i></div>			

It appearing from the duly verified petition of Emil A. C. Keppler and Max H. Keppler, partners trading under the firm name and style of Keppler & Co., and Clarence Mabie, auditor as hereinafter stated, that on the 3rd day of August, 1926, said Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, caused to be issued out of the New Jersey Supreme Court a writ of attachment directed to the Sheriff of the County of Bergen, commanding him to attach the rights and credits, moneys and effects, goods and chattels, lands and tenements of Charles W. Owen, an absconding and non-resident debtor, for the sum of fifty-eight thousand eight hundred forty dollars and eighty-eight (\$58,840.88) cents, returnable on the 23rd day of August, 1926; and that said Sheriff levied upon certain real estate and chattels of the said Charles W. Owen, and on or before the 13th day of August, 1926, returned said writ with his levy thereto annexed, which said levy was inadequate to satisfy the debt of said petitioners and that thereafter on the 10th day of August, 1926, Robert A. Altschuler caused to be issued out of the Bergen County Circuit Court a writ of attachment against the rights and credits, moneys and effects,

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*Rule to Show Cause.*

goods and chattels, lands and tenements of the aforesaid Charles W. Owen, returnable on the 14th day of September, 1926, for fifty-five hundred twelve dollars and fifty (\$5,512.50) cents, directed to the Sheriff of the County of Bergen; and that  
10 thereunder said Sheriff attempted to levy upon, seize and attach as the property of the said Charles W. Owen twenty (20) shares of the capital stock of the United Bond & Mortgage Company, and a certificate of membership in Hackensack Golf Club; and that thereafter and by an order of said Supreme Court made on the 26th day of August, 1926, Clarence Mabie, Esquire, was appointed  
20 auditor in this suit, and thereafter, on said 26th day of August, 1926, the petitioners, Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, caused an alias writ of attachment to issue out of this court, returnable on the 15th day of September, 1926, against the goods and chattels, etc., of the said Charles W. Owen for fifty-eight thousand eight hundred forty dollars and eighty-eight cents (\$58,840.88); and that thereunder, on the 31st day of August, 1926, said Sheriff levied upon, seized and attached a certificate for the  
30 twenty (20) shares of stock of United Bond & Mortgage Company standing in the name of and belonging to said Charles W. Owen, and surrendered the same to United Bond & Mortgage Company, the issuing company as required by law; and that afterward on the 14th day of September, 1926, by its order bearing date on that date, the Bergen County Circuit Court appointed one Arthur L. Robinson, Esquire, auditor in the said suit of the said Robert A. Altschuler; and that said  
40 Clarence Mabie, Esquire, auditor as aforesaid, has

*Rule to Show Cause.*

demanded possession of said certificate and the same has been refused on the ground that it was subject to a prior lien or claim under the writ of attachment issued out of the Bergen County Circuit Court as aforesaid; and it further appearing that the suit of said petitioners in said Supreme Court has proceeded with due speed, and this court having read and considered said petition, and the petitioners applying for this order:

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It is thereupon, on this 4th day of October, 1926, ordered that the aforesaid Robert A. Altschuler and Arthur L. Robinson, show cause before this court at the Court House in the City of Hackensack, New Jersey, on Oct. 18th, 1926, at 9 o'clock in the forenoon of that day, why the prayer of the petition of the said Emil A. C. Keppler and Max H. Keppler, partners as aforesaid, and Clarence Mabie, auditor as aforesaid, should not be granted; and why the writ of attachment issued out of this court at the suit of the said Robert A. Altschuler on the 10th day of August, 1926, should not be quashed, or the same vacated as to the said twenty (20) shares of the capital stock of the United Bond & Mortgage Company and the certificate of active membership in Hackensack Gold Club, or why the levy under said writ and the lien thereof should not be postponed to the levy made under the prior writ issued out of the New Jersey Supreme Court at the instance of said petitioners, Emil A. C. Keppler and Max H. Keppler, partners as aforesaid; and why all proceedings in said Circuit Court action, including the order appointing the said Arthur L. Robinson auditor, as aforesaid, should not be vacated and set aside, and that the further prosecution of said Circuit Court suit by the said Robert A. Altschuler should not be restrained; and why

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*Rule to Show Cause.*

10 the said United Bond & Mortgage Company, its officers and agents, should not be required to surrender up and deliver to the petitioner Clarence Mabie, auditor as aforesaid, the certificate for said twenty (20) shares of stock of said United Bond & Mortgage Company in its possession, or that the said Robert A. Altschuler and the said Arthur L. Robinson should not be required to consent to the delivery of said certificate to the said petitioner, Clarence Mabie, auditor, as aforesaid; and why the petitioners should not have such further or other relief as may be justified by the facts and circumstances of the case.

20 And it is further ordered that the interested parties have leave to take depositions in support of and in opposition to the petition aforesaid.

And it is further ordered that a true copy of this order and the petition whereon it is founded, neither of which need be certified, be served upon the said Robert A. Altschuler or his attorney, and the said Arthur L. Robinson, within 3 days from the date hereof.

NEWTON H. PORTER,  
Judge.

30 (Endorsed) :

Filed Oct. 4, 1926  
IRVING T. BRICKELL  
County Clerk

40

## Opinion.

## BERGEN COUNTY CIRCUIT COURT.

ROBERT A. ALTSCHULER,  
*Plaintiff,*

*v.*

CHARLES W. OWEN,  
*Defendant.*

In Attachment  
On Petition of  
A. C. Keppler  
*et al.*

10

SIDNEY W. ELDRIDGE for Petitioner.

REX B. ALTSCHULER for Respondent.

PORTER, J.:

The facts which were stipulated by counsel on this motion are, in part, as follows:

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(1) Keppler & Co. brought an attachment suit against Charles W. Owen, an absconding and non-resident debtor, on August 3, 1926, for \$58,840.88. A writ was delivered to the Sheriff of Bergen County on August 4, 1926, returnable August 23, 1926, whereupon he levied on certain residence property and contents. This writ was returned to the Clerk of the Supreme Court by the Sheriff on August 13, 1926.

30

(2) On August 10, 1926, an attachment suit was brought in the Bergen County Circuit Court against said Owen by Robert A. Altschuler for \$5,512.50 and a writ of attachment issued on that date returnable on September 14, 1926. Said writ was delivered to the Sheriff on August 10, 1926, and he levied on that date on twenty shares of stock of United Bond & Mortgage Co. and a certificate of membership in Hackensack Golf Club, all standing in the name of the said defendant.

40

*Opinion.*

(3) An auditor was appointed by the Supreme Court on August 26, 1926, and an auditor was appointed by the Circuit Court on September 14, 1926.

10 (4) On August 26, 1926, an alias writ of attachment was issued out of the Supreme Court in the Keppler suit aforesaid directed to the Sheriff of Bergen County who thereunder on August 31, 1926, levied upon the twenty shares of stock of United Bond & Mortgage Co. and the certificate of membership in Hackensack Golf Club aforesaid.

20 (5) On September 18, 1926, a pluries writ of attachment was issued out of the Supreme Court in the Keppler suit aforesaid, directed to the Sheriff of Bergen County, who thereunder on October 8, 1926, levied upon the twenty shares of stock of United Bond & Mortgage Co. and the certificate of membership in Hackensack Golf Club aforesaid.

It seems settled under the decisions of this state that more than one writ of attachment may issue out of the same court against the same defendant at the suit of different plaintiffs, but that but one such suit be permitted to go to judgment and but one auditor shall be appointed.

30 The legislative intent was to conserve the property of an absent or absconding debtor for the benefit of the attaching and applying creditors, to take the property into the custody of the law and to administer it for that purpose.

40 Harris *v.* Linnard, 9 N. J. L. 58;  
 Cummins *v.* Blair, 18 N. J. L. 151;  
 Brundred *v.* Del Hoyo, 20 N. J. L. 328;  
 Brown *v.* Bissett, 21 N. J. L. 46;  
 Duffin *v.* Wolf, 21 N. J. L. 475;  
 Blatchford *v.* Conover, 40 N. J. E. 205;  
 Woodward *v.* Lishman, 80 N. J. L. 586.

*Opinion.*

The case at bar, however, is distinguishable from all of the above cited cases in that the writs were not issued out of the same court and the property levied on was not the same. No case is cited which covers this situation. Nor have I found any. In principle, however, I see no difference. The writ in the Supreme Court suit was issued and executed prior to the Circuit Court writ and is therefore the senior writ and should take precedence. This is so notwithstanding the fact that different property was levied on under the original writs.

10

The auditor appointed by the Supreme Court in the Keppler suit should administer all of the property levied on for the benefit of the plaintiff in that suit and applying creditors thereunder as provided by statute.

20

The appointment of the Auditor in the Altschuler Circuit Court suit should be set aside.

An order will be signed in accordance with these views.

NEWTON H. PORTER,  
Circuit Court Judge.

December 24, 1926.

(Endorsed) :

30

Filed Dec. 27, 1926  
JAMES W. MERCER,  
County Clerk

40

**Order Vacating and Fixing Priorities, etc.**

BERGEN COUNTY CIRCUIT COURT.

10

ROBERT A. ALTSCHULER,  
*Plaintiff,*

*v.*

CHARLES W. OWEN,  
*Defendant.*

Action at Law.  
In Attachment.

20

This cause coming on to be heard on the duly verified petition of Emil A. C. Keppler and Max H. Keppler, partners trading as Keppler & Co., and Clarence Mabie, Auditor, and the rule to show cause allowed thereon, directed to Robert A. Altschuler and Arthur L. Robinson, and it appearing to the court that said petition and rule were duly served upon the said Robert A. Altschuler and Arthur L. Robinson, and the court having read and considered said petition, and the stipulation of facts filed herein, and heard and considered the arguments and admissions of Sidney W. Eldridge, Attorney for the petitioners, and Rex B. Altschuler, Attorney for the respondents, and it appearing from said petition, stipulations, arguments and admissions that the prayer of the petition should in part be granted, as hereinafter provided.

30

40

It is thereupon, on this 31st day of December, nineteen hundred and twenty-six, ordered that the order of this court entered in this cause on the 14th day of September, 1926, appointing Arthur L. Robinson, Esquire, auditor, be and the same is hereby vacated, set aside and for nothing holden; and that the said Robert A. Altschuler be and he is hereby restrained from the further prosecution of this suit until this court shall otherwise order.

*Order Vacating and Fixing Priorities.*

Further Ordered that the lien of the levy or attachment made on twenty shares of the capital stock of United Bond & Mortgage Company, standing in the name of the defendant, Charles W. Owen, and the certificate of active membership of the said Charles W. Owen in Hackensack Golf Club, under the writ of attachment issued out of this court at the suit of the plaintiff herein, be and the same is hereby postponed to the lien and levy on said stock and certificate or membership made by the sheriff of the County of Bergen under the writs of attachment issued out of the Supreme Court of the State of New Jersey at the suit of Emil A. C. Keppler and Max H. Keppler, partners trading as Keppler & Co., plaintiffs, and against Charles W. Owen, the defendant herein and therein.

And it is further ordered that the petitioner Clarence Mabie, auditor as aforesaid, is entitled to have and receive twenty shares of stock of United Bond & Mortgage Company standing in the name of the defendant, Charles W. Owen, and the certificate thereof, and the certificate of active membership of Charles W. Owen in Hackensack Golf Club, and the proceeds of sale thereof, to the end that he may administer such property for the benefit of the plaintiffs and the applying creditors in said Supreme Court suit, in accordance with the directions of the statute in such case made and provided.

NEWTON H. PORTER,  
Judge Circuit Court.

(Endorsed) :

Filed Jan. 18, 1927.

JAMES W. MERCER,  
County Clerk

*Order Vacating and Fixing Priorities.*

State of New Jersey, }  
 County of Bergen, } ss.:

10 I, JAMES W. MERCER, Clerk of the County of Bergen and also Clerk of the Circuit Court for said County, do hereby certify that the foregoing are true copies of the original papers filed in the Case of Robert A. Altschuler against Charles W. Owen as the same remains on file in my office at Hackensack.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said  
 (Seal) County and Court at Hackensack on the 10th day of November, A. D. 1927.

JAMES W. MERCER,  
 Clerk,

20

(Seal)

By WM. S. DOREMUS,  
 Deputy.

30

40

**Notice of Taking Depositions.**  
NEW JERSEY SUPREME COURT.

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners, trad-  
ing as KEPPLER & COMPANY, and  
CLARENCE MABIE,  
*Respondents.*

} On Certiorari.

10

PLEASE TAKE NOTICE that pursuant to leave con-  
tained in the order of the Supreme Court under  
date of December 20, 1927, the subscriber will take  
the depositions of Alfred T. Holley and Louis  
Turro, to be used in the argument of the above-  
entitled cause, before Peter W. Stagg, Esquire, one  
of the Supreme Court Commissioners of the State  
of New Jersey, at his office, #78 Main Street, Hack-  
ensack, New Jersey, at ten o'clock in the forenoon  
of Tuesday, the 27th day of December, 1927.

20

Dated December 22, 1927.

30

SIDNEY W. ELDRIDGE,  
Attorney of Respondents Keppler  
& Co. and Clarence Mabie

To

REX B. ALTSCHULER, Esq.,  
Attorney of Prosecutors.

40

## Depositions.

### NEW JERSEY SUPREME COURT.

10

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners, trad-  
ing as KEPPLER & COMPANY, and  
CLARENCE MABIE,  
*Respondents.*

On Certiorari.  
Rule to Take  
Depositions.

20

Under the above Rule Rex B. Altschuler, prose-  
cutor in the above entitled case, and Sidney W.  
Eldridge, attorney for the defendants in the above  
entitled case, appeared before me on notice on  
Tuesday, the twenty-seventh day of December,  
Nineteen Hundred and Twenty-seven, at my office,  
78 Main Street, Hackensack, New Jersey.

Upon their appearance to take Depositions they  
consented that the signatures of witnesses be  
waived.

30

AND I HEREBY CERTIFY that the annexed Deposi-  
tions were taken before me at the time and place  
above indicated in the presence of Rex B. Altschu-  
ler, attorney for the prosecutor, and Sidney W.  
Eldridge, attorney for the defendants, and that the  
same have been truly transcribed.

PETER W. STAGG,  
Supreme Court Commissioner of N. J.

40

*Alfred T. Holley, direct.*

NEW JERSEY SUPREME COURT.

ROBERT A. ALTSCHULER and ARTHUR L. ROBINSON, <i>Prosecutors,</i>  <i>v.</i> NEWTON H. PORTER, Circuit Court Judge; EMIL A. C. KEPPLER and MAX H. KEPPLER, partners, trad- ing as KEPPLER & COMPANY, and CLARENCE MABIE,  <i>Respondents.</i>	} On Certiorari. 10 } Rule to Take } Depositions. } Affidavit.
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State of New Jersey, } County of Bergen, } ss.:	} 20
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MARGARET TURCO, of the City of Hackensack, County of Bergen and State of New Jersey, of full age, being duly sworn according to law, on her oath deposes and says: That she will well and truly stenographically take the Depositions in the above entitled cause and truly transcribe the same.

MARGARET TURCO.

Sworn and subscribed to before me } this 27th day of December, 1927. }	} 30
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PETER W. STAGG,  
 Master in Chancery of N. J.

ALFRED T. HOLLEY, being duly sworn according to law on his oath, deposes and says:

*By Mr. Eldridge:*

Q. Colonel Holley, you are the President of the	} 40
---	------

*Alfred T. Holley, direct.*

United Bond and Mortgage Company of Hackensack, New Jersey? A. I am.

10 Q. And Charles W. Owen is one of the original subscribers of this Company? A. I am not quite sure whether he was an original subscriber, but he is a subscriber.

20 Mr. Rex B. Altschuler interposes at this time objection to any testimony to be given by Mr. Holley or any other witnesses, including Louis Turro, deputy sheriff, appertaining to the Circuit Court action of Robert A. Altschuler, plaintiff, against Charles W. Owen, defendant, on the ground that Mr. Eldridge, who represents Keppler & Co., is not representing a party to the action and on the further ground that any testimony that may be given by Louis Turro, deputy sheriff, as to the mode of levy in said action is not proper, because the return of the said sheriff is attempted to be attacked in a collateral manner while as a matter of fact the return of the said sheriff is conclusive thereon.

30 Q. A certificate of stock was issued to Mr. Owen?  
A. Yes, sir.

Q. Have you the certificate with you, Mr. Holley?  
A. Yes.

Q. Will you refer to it and give me its date? A. It was certificate number eleven issued on the 18th day of February, 1926.

Q. And is that an original issue? A. It is.

Q. May I see the certificate?

40 (Witness produces the certificate for the attorney.)

*Louis Turro, direct.*

Q. Is there any notation in this stock book which you produced now containing the certificate to indicate that there was an attachment on this stock?

A. There is an order from the Court.

Q. You refer to an order dated August 26th, 1926, made by one of the Supreme Court Judges in the suit of Emil A. C. Keppler and Max H. Keppler, partners, trading as Keppler & Company against Charles W. Owen? A. That is correct.

10

Q. And to a further order of the same Court in the same cause dated May 6th, 1927, made by Judge Parker ordering the sale of personal property, etc., to satisfy the judgment of the plaintiffs in this suit and the applying creditor? A. It is.

Mr. Holley stands aside for a few minutes.

20

---

LOUIS TURRO of full age, being duly sworn according to law, on his oath deposes and says:

*By Mr. Eldridge:*

Q. You are the Deputy Sheriff of Bergen County?  
A. I am.

Q. And you have been for how many years? A. Seven years next February of next year.

30

Q. You were deputized to make a levy under the writ of attachment issued out of the Bergen County Circuit Court at the suit of Robert A. Altschuler against Charles W. Owen? A. I was.

Q. Did you make a levy? A. I did.

Q. What did you levy on? A. Twenty shares of stock in the United Bond and Mortgage Company, Hackensack, New Jersey.

Q. Anything else? A. Well, about six others, I guess.

40

Q. On anything else? A. No, just that certificate of stock.

*Louis Turro, direct.*

Q. And have you any idea when that was? A. Around August, 1926.

Q. At the time that levy was made did you have any written instructions as to the method of making it? A. Why no.

10 Q. Did you previously levy on stock, corporation stock, under any writ of attachment? A. I don't remember.

Q. You don't recall having made any levy on stock theretofore? A. I don't recall.

Q. Were you familiar at that time with the provisions of the uniform stock transfer law in respect to levying on corporate stock? A. Yes.

Q. From what sources did you gain your familiarity with it? A. Through my experience.

20 Q. Then you had made other levies on corporate stock? A. Yes, I did.

Q. Before you made the levy under the Altschuler writ? A. Yes.

Q. How long before that time? A. I made one at the Hackensack Golf Club, Membership Certificate.

Q. When was that levy made? A. Prior to this one.

30 Q. And how long before? A. I should judge about three or four months before that. Two months.

Q. And who was the plaintiff in this action under which you made the levy? A. Keppler & Company.

Q. And at that time you made a levy under the Keppler & Company writ did you also levy on the stock of the United Bond & Mortgage Company? A. No, not on the Keppler writ.

40 Q. You did make a levy on the Keppler writ on

*Louis Turro, direct.*

the stock of the United Bond and Mortgage, did you not? A. Yes.

Q. Then the first levy you made on stock was made under the Keppler writ, is that so? A. Yes, I did.

Q. And at the time that levy was made under the Keppler writ you had a letter of instructions, did you not? A. I don't remember. I don't recall. 10

Q. I show you a letter dated August 31, 1926, directed to the Sheriff of Bergen County concerning the Keppler matter and ask you to read it.

(Witness is now reading the letter or copy of it.)

Q. Do you recall having this letter in your possession for instructions? A. I don't. 20

Q. And do you recall at the time having any specific instructions with respect to the method of levying before you executed the Keppler writ? A. No, I don't remember.

Q. Now is it customary when levying for you to describe the property that you seize under the writ? A. Yes, it is.

Q. And if you did levy on a certificate of stock, to wit, the certificate No. 11 20 shares of the capital stock of United Bond and Mortgage Company, would you have so stated in your inventory? A. Yes. 30

Q. Do you ever recall having done so with respect to the Altschuler writ? A. Yes.

Q. Now I exhibit to you certified copy of an alias writ of attachment issued out of the Supreme Court at the suit of Keppler & Co. against Charles W. Owen dated Aug. 26, 1926, and ask you whether you recall having had this in your hands for execution. 40

(Witness is handed a paper, being the cer-

*Louis Turro, direct.*

tified copy referred to in the question described by counsel and is now reading it.)

A. I don't remember.

10 (Mr. Eldridge offers this certified copy with the levy annexed in evidence. Marked D-1.)

Q. Now, Mr. Turro when you went with the Altschuler writ to levy on this stock did Mr. Rex B. Altschuler go with you? A. Yes, he accompanied me.

Q. And Mr. Bratt went with you also? A. Yes.

20 Q. Now, you are quite sure that you didn't levy under the Altschuler writ on the stock of the Hackensack Golf Club? A. I don't recall whether it was the Altschuler writ.

Q. Do you recall however having made a levy on the stock of the Hackensack Golf Club? A. I do.

Q. And when you made the levy did Mr. Rex B. Altschuler go with you to make that levy at the Golf Club? A. No, Mr. Bratt was with me that time.

30 Q. Where did you go to make the levy? A. At the Hackensack Golf Club in Hackensack.

Q. And how many times did you go there to make levies last year? A. Where?

Q. Hackensack Golf Club. A. I think it was once, maybe twice—I don't know.

40 Q. Now did you ever see the certificate No. 11 issued by United Bond and Mortgage Company to Charles W. Owen? A. Mr. Holley, I believe, had this certificate in his hand at that time. I stood outside of the rail and Mr. Holley and Mr. Altschuler walked to the rear of the office. Mr. Holley came out with the certificate and Mr. Altschuler

*Louis Turro, direct.*

demanded me to come in inside the rail into the office part. I took out a copy of the writ of attachment and told him that I am there to attach the shares of the United Bond and Mortgage Company in which you are President. I then in turn handed him a copy of the writ.

10

Q. That is what you did at the office at that time? A. Yes.

Q. And now on that occasion did you see the certificate of stock? A. Mr. Holley had it in his hand. That is the only one time.

Q. You are quite certain about that? A. Well, it was a piece of paper that I am sure.

Q. You are sure that you only went there once? A. Yes.

Q. And that you never went there under the Keppler writ? A. No. I don't recall.

20

Q. You say that this certified copy Exhibit D-1 didn't truly express what took place when you acted under the writ of attachment in the Keppler matter. A. I don't recall making an attachment under this writ. I don't recall.

Q. Are you the only Deputy bearing the name of Turro connected with the Sheriff's office? A. Yes, sir.

Q. And if that contains a statement that you made a levy on this stock of United Bond and Mortgage Company that is an error, is it? A. No, I wouldn't say it is an error.

30

Q. You simply say that you don't recall the incident? A. No, I don't recall. I don't.

Q. Do you live in Hackensack, Mr. Turro? A. I do.

Q. And you have known Mr. Rex B. Altschuler for a long while? A. A number of years.

40

Q. Do you know his brother Mr. Robert A. Altschuler? A. I don't know him.

*Sidney W. Eldridge, direct.*

SIDNEY W. ELDRIDGE, being duly sworn according to law, on his oath deposes and says:

10 I am the Attorney for Keppler & Co. who were the plaintiffs in the Supreme Court attachment suit instituted by them against Charles W. Owen. I caused to be issued out of the Supreme Court the alias writ of attachment, a certified copy of which is marked D-1 and delivered the writ to the Sheriff along with a letter directing the method of executing the writ with respect to a levy on twenty shares of stock of the United Bond and Mortgage Company and the certificate of active membership in the Hackensack Golf Club issued to the defendant Charles W. Owen. The stock of this Mortgage  
20 Company was likewise issued to Charles W. Owen. This letter was followed by another dated August 31st, 1926, which included instructions with respect to levy on certain other shares of stock. As I recall it the letter which I refer to was delivered at the Sheriff's Office to Mr. Bratt on August 31st, 1926. I have in my hands a copy of this letter and offer it in evidence.

30 (Copy of letter dated August 31st, 1926, received in evidence without objection and marked Exhibit D-2.)

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WILLIAM H. BRATT, being duly sworn according to law, on his oath deposes and says:

*By Mr. Eldridge:*

40 Q. You are connected with the Bergen County Sheriff's Office, Mr. Bratt? A. In the capacity of Chief Clerk.

Q. And subpoena was served upon you a few days ago to produce certain letters received from

*William H. Bratt, direct.*

Sidney W. Eldridge and Clarence Mabie? A. Yes, a subpoena was handed to me in a personal matter. There was no reference to the Sheriff's Office on the subpoena.

Q. The subpoena however called upon you to produce certain letters that were directed to the Sheriff of Bergen County. A. Yes, it did. 10

Q. And did you produce these letters? A. I didn't.

Q. You have access of course to the files containing these letters. A. I have access to certain files. I don't know whether they call that a dead file or not.

Q. And you are the executive or manager of that office, aren't you? A. Why, no.

Q. Who is the executive? A. Under Sheriff Donaldson. 20

Q. You handle all the correspondence for the Sheriff? A. Not all of it.

Q. You handled the correspondence with respect to the case of Keppler & Co. against Charles W. Owen? A. Why, I answered it "No."

Q. I show you a letter under date of August 11, 1926, on stationery of the Sheriff's Office of Bergen County and ask if you signed that. A. I signed that after your original letter being handed to Sheriff Nimmo he passed on the correspondence and I answered it. 30

Q. You signed and answered almost all of the correspondence in the Keppler matter? A. Yes, on the command of the Sheriff.

Q. And why is it that these letters are not produced this morning in accordance with the terms of the subpoena? A. Your subpoena was not to Under Sheriff Donaldson and he said, "I don't see why William H. Bratt or anyone else should take 40

*Sidney W. Eldridge, direct.*

letters from the files of the Sheriff's Office and take them from here without the consent of the Sheriff."

Q. Did you ask his consent? A. I didn't. I showed him the subpoena, that is Donaldson I am speaking about. The Sheriff was not there.

10

---

SIDNEY W. ELDRIDGE, being further sworn, on his oath deposes and says:

Afterwards I secured a restraining order in the Keppler suit from the Supreme Court and offer in evidence a certified copy thereof. Certified copy is marked Exhibit D-3.

20

On December 7, 1926, I caused judgment to be entered in the suit of Keppler & Co. against Charles W. Owen in favor of the plaintiffs for \$60,057.98 and in favor of National Supply Company of Texas and applying creditor for \$3,207.78, both amounts carrying interest and costs and the judgment being against Charles W. Owen. All of the attached property has been converted in cash and Mr. Clarence Mabie, who was the auditor appointed in the suit, realized from the sale something under \$5,000. There is no other property of this defendant Charles W. Owen of which we have any knowledge which may be applied to the satisfaction of the judgment of Keppler & Co. and the applying creditor. The twenty shares of stock of the United Bond and Mortgage Company and the certificate of active membership of Charles W. Owen in the Hackensack Golf Club have been sold by the auditor and \$2,490 realized. This sum the auditor, Clarence Mabie, is holding pending the outcome of this proceeding in certiorari and that sum also constitutes part of the \$5,000 realized from the sale of the attached property.

30

40

*Sidney W. Eldridge, direct.*

SIDNEY W. ELDRIDGE, being further duly sworn according to law, on his oath deposes and says:

I am the Attorney for the defendants in this certiorari proceeding which brings under review proceedings before the Bergen County Circuit Court in the attachment suit of Robert A. Altschuler against Charles W. Owen. In this suit I filed a petition on behalf of Keppler & Co. which was returned with the writ of certiorari and an order was made on the petition by Judge Porter which likewise is returned. When the matter was submitted to Judge Porter for his decision without the production of testimony a stipulation of facts was entered into and handed to the Court. I have in my possession a complete copy of this stipulation. On an examination of the files in the County Clerk's Office in Bergen County I find that the stipulation of facts is missing. I also find that there is no return of the stipulation with the writ. I have searched, through my files for the original of this stipulation and am unable to find it. I have inquired of Mr. Rex B. Altschuler who was oposed to me in this Circuit Court proceeding, for the original and he informs me it is not in his possession. I have communicated by letter with Judge Porter and told him the situation and he advises me that the stipulation is not in his possession.

Counsel for the plaintiff objects to any statements made by the witness referring to any statement made by Judge Porter.

(Witness continuing): and that he assumes that it was filed with the other papers in the cause. In short I have made a diligent search for the

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*Sidney W. Eldridge, direct.*

original of this stipulation and I am unable to find it. I offer in evidence this carbon copy of the original.

10            Objected to by counsel for the plaintiff on the ground that it isn't the original and furthermore it contains irrelevant matter which has no bearing on the matter under consideration. It very completely outlines the writ issued by the Supreme Court but omits many material matters in connection with the writ issued by the Circuit Court.

(Paper received in evidence and marked Exhibit D-4.)

20            The evidence is closed on the part of the defendants.

             Notice having been given for the taking of testimony for Wednesday, the 28th of December, 1927, at ten o'clock, at my office, and for some reason I was notified that the testimony would be taken of today, the 27th day of December, 1927, at ten o'clock. Both counsels for both sides appearing at that time I asked the counsel for the prosecutor in the writ of certiorari whether he desired to take testimony today on said notice and his reply is  
30            "No."

## Exhibit D-1.

## NEW JERSEY SUPREME COURT.

GEORGE P. NIMMO, Sheriff.

JOHN A. W. DONALDSON, Under Sheriff.

Hackensack, New Jersey.

Bergen County—N. J. Supreme Court.

10

EMIL A. C. KEPPLER, *et als.*, part-  
ners, etc. as KEPPLER & Co.

*v.*

CHARLES W. OWEN.

Writ of  
Attachment.  
Alias.

Inventory and appraisement of the rights and credits moneys and effects, goods and chattels, land and tenements of the defendant, made by virtue of the above stated writ on the 31st day of August, 1926, at the hour of 5 P. M. o'clock, by GEORGE P. NIMMO, Sheriff of Bergen County, and William H. Bratt, a discreet and impartial freeholder of said County, to wit:

20

Certificate number Eleven for Twenty shares in the United Bond & Mortgage stock in the hands of a *T. Holley* State St. Hackensack and valued the same in the sum of Two thousand (\$2,000.) dollars.

30

And on the first day of September, 1926, at the hour of 5 P. M. o'clock by George P. Nimmo, Sheriff of Bergen County, and William H. Bratt a discreet and impartial freeholder of the said County, to wit:

Certificate number Ninety-five for Five shares in the New Barbadoes Mutual B. & L. Ass'n. Series No. 1 in the hands of Lewis Shafer Secy. and

40

*Exhibits.*

valued the same in the sum of Two hundred and seventy-eight and 95/100 dollars.

10 And on the second day of September, 1926, at the hour of 5 P. M. o'clock by George P. Nimmo Sheriff of Bergen County, and William H. Bratt a discreet and impartial freeholder of the said county, to wit:

Mortgage given by Charles Ward Sr. and Mary C. Ward, dated June 14th, 1923, recorded in Book 608 of Mortgages from Bergen Co. on page 77, etc., Attached before Charles Ward Sr. and Mary C. Ward in person, at their residence 8 Temple Ave., Hackensack, N. J., and valued the same in Four hundred (\$400.) dollars.

20 LOUIS TURRO, Deputy Sheriff.  
WILLIAM H. BRATT, Freeholder.

State of New Jersey, }  
County of Bergen, } ss.:

I, GEORGE P. NIMMO, Sheriff of said County, do hereby deputize and appoint Louis Turro, to be my Special Deputy, to execute and return the within writ according to law.

30 GEORGE P. NIMMO, Sheriff (L. S.),  
Under Sheriff.

Witness my hand and seal this }  
twenty-seventh day of August, }  
A. D., 1926. }

*Exhibits.*

GEORGE P. NIMMO, Sheriff.  
 JOHN A. W. DONALDSON, Under Sheriff.  
 Hackensack, New Jersey.

Bergen County—N. J. Supreme Court.

EMIL A. C. KEPPLER, *et als.*, part-  
 ners, etc. as KEPPLER & Co.

*v.*

CHARLES W. OWEN.

Writ of  
 Attachment.

Alias.

10

Inventory and appraisal of the rights and credits, moneys and effects, goods and chattels, land and tenements of the defendant, made by virtue of the above stated writ on the ninth day of September, 1926, at the hour of 2:30 P. M. o'clock, by GEORGE P. NIMMO, Sheriff of Bergen County, and William H. Bratt, a discreet and impartial freeholder of said County, to wit: at East Rutherford, N. J., Book #8778 East Rutherford Building Loan Ass'n. Sixty-six (66) shares of stock in the hands of George A. Duncan Secretary, and placed no value upon them; their value being offset by a loan to the defendant by the association.

20

30

And on the ninth day of September, 1926, at the hour of 3:15 P. M. at the office of the Hackensack Golf Club, certificate #217, membership, and valued the same at Five hundred (\$500.) dollars.

LOUIS TURRO, Deputy Sheriff.

WILLIAM H. BRATT, Freeholder.

40



*Exhibits.*

appear before our Justices of our Supreme Court, to be held at Trenton, in and for said State, on the fifteenth day of September, 1926, to answer unto Emil A. C. Keppler and Max H. Keppler, partners doing business under the firm name and style of Keppler & Co. in an action at law, wherein the plaintiffs demand fifty-eight thousand, Eight hundred forty and 88/100 Dollars (\$58,840.88) and interest, and have you then and there this writ.

10

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice, at Trenton, aforesaid, the 26th day of August, A. D., 1926.

EDWARD J. KELLEHER,  
Clerk.

SIDNEY W. ELDRIDGE,  
Attorney.

20

By virtue of the writ of attachment hereto annexed, in the presence of William H. Bratt, a credible person, I, George P. Nimmo, Sheriff of the County of Bergen, executed the within writ of attachment by attaching the goods and chattels of Charles W. Owen as described in the within writ, and then and there in the presence of the said William H. Bratt, freeholder, I declared that I attached the rights and credits, monies and effects, goods and chattels, lands and tenements of Charles W. Owen, defendant at the suit of Emil A. C. Keppler *et als.*, etc., partners as Keppler, etc., plaintiff.

30

GEORGE P. NIMMO,  
Sheriff.

GEORGE P. NIMMO,  
Sheriff.

JOHN A. W. DONALDSON,  
Under Sheriff.

40

*Exhibits.*

Received Sheriff's Office,  
 Bergen County, N. J.  
 12:35 P. M.  
 Aug. 27, 1926.

10 GEORGE P. NIMMO,  
 Sheriff.

J. A. W. DONALDSON,  
 Under Sheriff.

Bergen County—Hackensack, N. J.  
 Sheriff's Fees \$6.00

A true copy

20 EDWARD J. KELLEHER,  
 Clerk

(Endorsed) :

Affidavit for \$58,840.88 filed before  
 issuing this writ.

August 26, 1926.

EDWARD J. KELLEHER, Clerk

Filed Sep. 23, 1926,

30 EDWARD J. KELLEHER,  
 Clerk.

EXHIBIT D-1.

PETER W. STAGG  
 Supreme Court Commissioner

40

*Exhibits.***Exhibit D-2.**

August 31, 1926

Sheriff, Bergen County,  
Court House,  
Hackensack, N. J.

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Re: Keppler & Company *vs.* Charles W. Owen,  
Attachment.

File #2831.

Dear Sir:

Will you please levy upon 66 shares of the stock of East Rutherford Building & Loan Association standing in the name of Charles W. Owen? The Secretary of this Association is George A. Duncan and the office of the Association is on the Triangle, Rutherford, New Jersey.

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Also, upon mortgage, Charles Ward, Sr. and Mary C. Ward, his wife, to Charles W. Owen dated June 14th, 1923 to secure \$400. recorded in book 608 of mortgages for Bergen County, on pages 77 &c. Ward lives at No. 8 Temple Ave.

Also, upon \_\_\_\_\_ shares of the stock of the New Barbadoes Building & Loan Association, Louis W. Shaffer, Secretary, 725 Main Street, Hackensack, New Jersey, standing in the name of Charles W. Owen.

30

Also, upon membership certificate of Charles W. Owen in the Hackensack Golf Club, Hackensack, New Jersey.

Will you please make a levy this afternoon upon a certificate for 20 shares of the capital stock of United Bond & Mortgage Company which you will find in the possession of Mr. A. T. Holley, President

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*Exhibits.*

of the company, at the office of the company 200 State Street, Hackensack, New Jersey. Please request Mr. Holley to submit the certificate for your inspection and make a note in your levy of the number of the certificate, the number of shares and its date. Your freeholder, of course, should be present when this is done.

I hand you herewith a copy of the alias writ of attachment which you may leave with Mr. Holley.

Yours very truly,

Aug. 31/26  
3:40 P. M.

SM/JD  
(Enc)

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**Exhibit D-3.**

## NEW JERSEY SUPREME COURT.

EMIL A. C. KEPPLER and MAX H.  
KEPPLER, partners trading as  
KEPPLER & Co.,

*Plaintiff,*

*v.*

CHARLES W. OWEN,  
*Defendant.*

Action at Law.  
In Attachment.  
Order re-  
straining.

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This matter coming on to be heard on the duly verified petition of the plaintiffs herein, and the rule to show cause allowed thereon on the twenty-first day of October, 1926, and it appearing from said petition and the admissions of the parties that at the time of the issuance of the writs of attachment herein Charles W. Owen was the holder of

*Exhibits.*

certificate #217 of active membership in Hackensack Golf Club and of twenty (20) shares of the capital stock of United Bond & Mortgage Company, a corporation of the State of New Jersey, evidenced by certificate #11, that in the month of September, 1926, under the alias writ issued herein, directed to the Sheriff of the County of Bergen, said officer levied upon the certificate of active membership and certificate of capital stock aforesaid, which former certificate was at the time of the allowance of said rule in the possession or under the control of Maude A. Owen, Charles H. Stewart and Richard Hartshorne, and the certificate of capital stock in the possession of Alfred T. Holley, President of the United Bond & Mortgage Company, and that said petition and rule to show cause were served as therein directed, and that since the service thereof certificate #217 of active membership of Charles W. Owen, in Hackensack Golf Club has been delivered to Clarence Mabie, Esquire, the auditor appointed herein; and it further appearing that at the time of the filing of the petition aforesaid there had been a seizure, or attempted seizure, of the certificate of active membership and certificate of stock aforesaid under a junior writ of attachment issued out of the Circuit Court of the County of Bergen, at the suit of Robert A. Altschuler against Charles W. Owen, and that proceedings were in said court pending to determine, among other things, the relative priority of said junior writ and the writ of the plaintiffs herein, and that said Bergen County Circuit Court, by its order dated December 31st, 1926, ordered and adjudged that the lien of the writ of the plaintiffs herein was prior to the lien of the writ of the said Robert A. Altschuler in said Cir-

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*Exhibits.*

10       cuit Court suit, and that Clarence Mabie, Esquire,  
the auditor herein, was entitled to have and re-  
ceive the two certificates aforesaid and to admin-  
ister such property in this suit, and distribute the  
proceeds thereof as by the statute provided, and  
the hearing upon said petition and rule having  
from time to time been continued by orders en-  
tered herein to the date hereof;

20       IT IS THEREUPON, on this 23rd day of February,  
nineteen hundred and twenty-seven, on motion of  
Sidney W. Eldridge, attorney for the plaintiffs,  
ordered that the said Charles W. Owen, the de-  
fendant herein, be restrained from selling or trans-  
ferring certificate #217 of active membership in  
Hackensack Golf Club, and certificate #11 for  
twenty (20) shares of the capital stock of United  
Bond & Mortgage Company and the rights and in-  
terests represented by said certificates, or from  
making any other disposition thereof.

30       AND IT IS FURTHER ORDERED that except as herein-  
above provided, the rule to show cause aforesaid  
be discharged, but without costs in favor of any  
of the respondents, and without prejudice to the  
plaintiffs.

Let this rule be entered.

C. W. PARKER,  
Supreme Court Justice.

Entered Feb. 25, 1927,  
On motion of  
SIDNEY W. ELDRIDGE,  
Attorney for Plaintiffs.

40       A true copy.  
EDWARD J. KELLEHER,  
Clerk.

*Exhibits.***Exhibit D-4.**

## BERGEN COUNTY CIRCUIT COURT.

<p>ROBERT A. ALTSCHULER, <i>Plaintiff,</i></p>	}	<p>In Attachment. Stipulation of Facts on Petition of Keppler &amp; Co. and Rule to Show Cause Allowed Thereon.</p>	<p>10</p>
<p>v.</p>			
<p>CHARLES W. OWEN, <i>Defendant.</i></p>			

Attorneys for the plaintiff-respondent and the petitioners stipulate the facts, so far as they relate to the petition of Emil A. C. Keppler and Max H. Keppler, partners trading as Keppler & Co., filed in the above entitled cause, and the relief therein prayed, to be as follows:

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1. On the 3rd day of August, 1926, Emil A. C. Keppler and Max H. Keppler, partners doing business under the firm name and style of Keppler & Co., caused a writ of attachment to be issued out of the New Jersey Supreme Court against the rights and credits, etc., of Charles W. Owen, an absconding and non-resident debtor, for the sum of Fifty-eight thousand eight hundred forty dollars and eighty-eight (\$58,840.88) cents, which writ was returnable on the 23rd day of August, 1926, and was issued under the provisions of the Attachment Act of 1901.

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2. The above writ was delivered to the Sheriff of the County of Bergen on the 4th day of August, 1926, at 8:45 P. M., and thereunder said Sheriff levied upon and seized real estate situated at the corner of Summit Avenue and Beach Street, Hackensack, New Jersey, being in the Township of New

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*Exhibits.*

Barbados, title to which stands in the joint names of the defendant, Charles W. Owen, and Maude A. Owen, his wife, and tenants by the entirety, and which property is subject to a mortgage upon which there is due approximately \$7,000, and municipal taxes of approximately \$800, and is of the reasonable value of approximately \$40,000.00.

10 3. That under said writ the Sheriff also seized personal property, consisting principally of household furniture, practically all of which is claimed by the wife of the defendant, and is worth approximately \$1,000.

4. Charles W. Owen, the defendant, and Maude A. Owen, are both living.

20 5. On the 13th day of August, 1926, the writ aforesaid was received in the office of the Clerk of the Supreme Court and there filed, with the return of the Sheriff of Bergen County endorsed.

6. On the 10th day of August, 1926, Robert A. Altschuler caused a writ of attachment to be issued out of the Bergen County Circuit Court against Charles W. Owen, an absconding and non-resident debtor, under the Attachment Act of 1901 aforesaid, for the sum of Five Thousand five hundred twelve dollars and fifty (\$5,512.50) cents, which writ was returnable on the 14th day of September, 1926.

30 7. On the 10th day of August, 1926, the last mentioned writ of attachment was delivered to the Sheriff of the County of Bergen, who on that day levied, or attempted to levy, upon twenty shares of stock of United Bond & Mortgage Company, standing of record in the name of Charles W. Owen, and a certificate of active membership in

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*Exhibits.*

Hackensack Golf Club, standing in the name of said defendant.

8. The Sheriff's return as endorsed upon said writ reads as follows:

"We did on the above day and date (August 10, 1926 at 12 A. M.) attach the right, title and interest of Charles W. Owen, consisting of twenty shares of the United Bond & Mortgage, at \$100.00 par value at the office of the United Building & Loan Company on State Street, Hackensack, N. J." 10

Said return reads further as follows:

"Executed the within writ of attachment by going to the property of Charles W. Owen at the United Building & Loan Company, State St., Hackensack, N. J. and attached his shares to the value of \$2,000, and by going to the Hackensack Golf Club, Central Avenue, Hackensack, N. J. and attaching the certificate of membership of the defendant, Charles W. Owen, to the value of \$500, and then and there, in the presence of the said William H. Bratt, freeholder, I declared that I attached the rights and credits, moneys and effects, goods, etc., of Charles W. Owen, defendant at the suit of Robert A. Altschuler, plaintiff." 20 30

The levy on the twenty shares of the capital stock of United Bond & Mortgage Company was actually made, or attempted to be made, at the registered office of the company on State Street, Hackensack, New Jersey.

9. The value of the twenty shares of stock of United Bond & Mortgage Company is approxi- 40

*Exhibits.*

mately \$2,000, and that of the certificate of active membership in Hackensack Golf Club approximately \$500.

10        10. By its order dated August 26, 1926, the Supreme Court appointed Clarence Mabie auditor in the suit of the petitioners against the said Charles W. Owen, and directed the advertising of notice of the attachment, etc.

20        11. To correct an error in the name of the paper, in which notice of the attachment was to be published, as provided in the order of August 26, 1926, by its further order dated September 4, 1926, the Supreme Court directed publication to be made in the Bergen Evening Record.

20        12. Notice of the issuance of the attachment, etc., as required by the statute was published in Bergen Evening Record, September 9th, 16th, 23rd and 30th, 1926, being four successive weeks.

13. On September 14, 1926, Bergen County Circuit Court appointed Arthur L. Robinson auditor in the attachment suit therein pending, and directed the publication of notice of the attachment.

30        14. No appearance has been entered in either suit by the defendant, Charles W. Owen.

15. On August 26, 1926, an alias writ of attachment was issued out of the Supreme Court at the suit of the petitioners, directed to the Sheriff of Bergen County, returnable on the 15th day of September, 1926, and was delivered to said Sheriff on August 27, 1926.

40        16. On the 31st day of August, 1926, under the alias writ last mentioned, the Sheriff of Bergen County levied upon certificate #11 for twenty

*Exhibits.*

shares of the capital stock of United Bond & Mortgage Company standing in the name of Charles W. Owen, the defendant, said certificate being then in the hands of A. T. Holley, President of said United Bond & Mortgage Company, said levy being made at the registered office of said United Bond & Mortgage Company on State Street, Hackensack, New Jersey, and said certificate being then and there delivered to the sheriff, who, after making said attachment, surrendered the same to Mr. Holley, President of the issuing company, and which said certificate was appraised at \$2,000. 10

17. On the 9th day of September, 1926, a levy was made under the alias writ aforesaid, upon certificate #217 of active membership in Hackensack Golf Club, at the office of said Hackensack Golf Club, said certificate having been inventoried and appraised at the sum of \$500. 20

18. The levy on the certificate of stock of United Bond & Mortgage Company was made in the presence of the president of said company, and in the presence of William H. Bratt, a credible person, and the levy on the membership certificate in Hackensack Golf Club was made in the presence of the person in charge of the records of membership of said Hackensack Golf Club, and in the presence of said William H. Bratt, a credible person, on each occasion the sheriff or his deputy declaring that he attached the rights and credits, etc., of Charles W. Owen, defendant at the suit of Emil A. C. Keppler, *et als., etc.*, partners as Keppler, etc., plaintiffs. 30

19. The certificate of membership in Hackensack Golf Club reads as follows: 40

*Exhibits.*

No. 217      Hackensack Golf Club  
                   Hackensack, N. J.

## ACTIVE MEMBERSHIP CERTIFICATE

10            THIS IS TO CERTIFY that C. W. Owen is an active member of the Hackensack Golf Club and is the owner of this active membership certificate.

The certificate is issued pursuant to the by-laws of the Hackensack Golf Club, and is transferrable only to the club, or with the consent of the Board of Trustees, as provided by said by-laws.

20            IN WITNESS WHEREOF, this certificate has been signed by the President and the corporate seal has been hereto affixed and attested by the Secretary of the said Hackensack Golf Club, this 10th day of August, 1925.

HACKENSACK GOLF CLUB,  
 By JOHN L. FLAGG,  
 President.

Attest:

30            JOHN C. CONKLIN.

20. On the 18th day of September, 1926, Keppeler & Co. caused a pluries writ of attachment to issue out of the New Jersey Supreme Court, directed to the Sheriff of Bergen County, commanding him to attach the rights and credits, etc., of the defendant, Charles W. Owen, which said writ was returnable on the 8th day of October, 1926.

40            21. The pluries writ aforesaid was duly delivered to the Sheriff of the County of Bergen, who, on the 8th day of October, 1926, levied upon and seized the right, title and interest of the defendant,

*Exhibits.*

Charles W. Owen, in twenty shares of stock of United Bond & Mortgage Company, as evidenced by certificate #11 issued by said company to the said Charles W. Owen. Said levy was made at the registered office of the company on State Street, Hackensack, New Jersey, in the presence of Alfred T. Holley, President of said company, and Hugh J. Otis, a credible person. 10

22. Likewise, under the same writ, and in the presence of Ward G. Berry, the registered agent of Hackensack Golf Club, on the 8th day of October, 1926, the Sheriff levied upon and seized the right, title and interest of the defendant, Charles W. Owen, in membership certificate #217 of the Hackensack Golf Club. 20

23. In each of the cases last aforesaid an inventory and appraisalment was made by the sheriff or his deputy, with a freeholder, as directed by the statute, and the president of United Bond & Mortgage Company was handed a certified copy of the writ of attachment, and the registered agent of the Hackensack Golf Club, Ward G. Berry, was handed a like certified copy.

24. The certificate of active membership in Hackensack Golf Club was issued August 10, 1925, and the certificate for twenty shares of stock of United Bond & Mortgage Company was issued February 18, 1926. 30

25. On the 14th day of October, 1926, a writ of attachment was issued out of the New Jersey Supreme Court at the instance of Keppler & Co. against the goods and chattels, etc., of Charles W. Owen, directed to the Sheriff of Essex County, and returnable on the 3rd day of November, 1926, under and by virtue of which said Sheriff of Essex 40

*Exhibits.*

10 County attempted to levy upon the certificate of active membership aforesaid in Hackensack Golf Club, which was at the time of the issuance of said writ, and on the 15th day of October, 1926, in the hands of Messrs. Stewart & Hartshorne, Attorneys for Maude A. Owen, the wife of the defendant in attachment, at their offices at #9 Clinton Street, Newark, New Jersey, but was informed by Richard Hartshorne, a member of said firm, that the certificate had been sent to Mrs. Maude A. Owen.

26. A copy of the by-laws and constitution of the Hackensack Golf Club shall be submitted and considered by the court if material.

20 27. On the 21st day of October, 1926, the New Jersey Supreme Court allowed a rule to show cause, directed to Charles W. Owen, Maude A. Owen, United Bond & Mortgage Company, Alfred T. Holley, Charles H. Stewart and Richard Hartshorne, returnable on the 24th day of November, 1926, which contained an *ad interim* restraint upon the transfer and delivery of the certificate of United Bond & Mortgage Company and the certificate of membership in Hackensack Golf Club, and against permitting either certificate to leave the possession of the persons to whom said rule was directed.

30 28. Possession of both certificates has heretofore been demanded by the Auditor Clarence Mabie and possession of the certificate of stock of United Bond & Mortgage Company has been refused because of the levy or alleged levy thereon under the Altschuler writ. The certificate of membership in Hackensack Golf Club is now in the possession of Clarence Mabie, Auditor in the Keppler

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*Reasons in Certiorari.*

suit, subject to any rights therein as may be possessed by plaintiff in the Altschuler suit.

29. No creditors have applied for the benefit of the Altschuler attachment and one creditor has applied for the benefit of the Keppler & Co. attachment. 10

SIDNEY W. ELDRIDGE,  
Attorney of Petitioners.  
REX B. ALTSCHULER,  
Attorney of Plaintiff,  
Robert A. Altschuler, and  
Auditor, Arthur L. Robinson,  
Respondents.

*Reasons in Certiorari.* 20

## NEW JERSEY SUPREME COURT.

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners, trad- 30  
ing as KEPPLER & COMPANY, and  
CLARENCE MABIE,  
*Respondents.*

Robert A. Altschuler and Arthur L. Robinson,  
Prosecutors in the above entitled proceedings, rely  
upon the following reasons in their application to  
have set aside and for nothing holden the order  
made by the Circuit Court of the County of Bergen 40

*Reasons in Certiorari.*

and signed by Newton H. Porter, Circuit Court Judge, dated December 31, 1926, in a certain proceeding in attachment brought against Charles W. Owen at the suit of Robert A. Altschuler in which, as appears by the order aforesaid made and signed  
10 by the said Newton H. Porter, the appointment of Arthur L. Robinson, auditor, was vacated and the lien and levy on certain property was set aside, and the said Robert A. Altschuler was restrained from further proceeding in said cause:

1. That the Sheriff of the County of Bergen did, on August 10th, 1926, in the cause of Robert A. Altschuler, plaintiff, vs. Charles W. Owen, defendant, legally execute the writ of attachment issued  
20 out of the Bergen County Circuit Court in said action on said date, against the rights and credits, monies and effects, goods and chattels, lands and tenements, of the said Charles W. Owen, and that said Sheriff did thereunder, and on said date, levy upon, seize and attach as the property of Charles W. Owen, twenty (20) shares of capital stock of the United Bond and Mortgage Co., and one certificate of membership in the Hackensack Golf Club, all as shown upon his said return.

30 2. That the Sheriff of the County of Bergen executed the aforesaid writ according to law and created a lien upon the attached property prior to any lien which may have been created thereon by a subsequent levy on the 31st day of August, 1926, under an alias writ of attachment issued out of the Supreme Court in the cause of Emil A. C. Keppler and Max H. Keppler, partners trading as Keppler & Co. vs. Charles W. Owen.

40 3. That the Sheriff of Bergen County, in the

*Reasons in Certiorari.*

Circuit Court action of Robert A. Altschuler, plaintiff, vs. Charles W. Owen, defendant, did first execute his writ according to law and thereby created a lien upon the attached property prior to the lien of any subsequent attachment issued out of the Supreme Court.

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4. The mere issuance of a writ by the Supreme Court in the action of Emil A. C. Keppler and Max H. Keppler, partners trading as Keppler & Co., vs. Charles W. Owen, on August 3, 1926, and the lodgment of said writ in the Sheriff's Office, did not create a lien upon the twenty shares of capital stock of the United Bond and Mortgage Co. and the one certificate of membership in the Hackensack Golf Club belonging to the defendant, in preference to the Circuit Court attachment under which said twenty shares of capital stock of the United Bond and Mortgage Co. and one certificate of membership in the Hackensack Golf Club were actually levied upon.

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5. The Circuit Court has concurrent jurisdiction with the Supreme Court in attachment actions.

6. The question of priority among attachments is dependent upon which is prior in point of time.

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7. The Circuit Court has power to appoint its own auditor and the court whose officer first seizes must distribute against the various claimants.

8. When the attached property is in the possession of one court for administration, it is not liable to be seized by process from another court.

9. The Circuit Court attachment having been first served and a levy made thereunder, it is entitled to priority as to the property attached, even

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*Notice of Amendment of Reasons.*

though the same property was subsequently attached by a writ of attachment issued out of the Supreme Court.

Dated November 22, 1927.

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REX B. ALTSCHULER,  
Attorney for Prosecutors.

**Notice of Amendment of Reasons.**

NEW JERSEY SUPREME COURT.

20

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners, trad-  
ing as KEPPLER & COMPANY, and  
CLARENCE MABIE,  
*Respondents.*

On Certiorari.

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To Emil A. C. Keppler and Max H. Keppler,  
partners trading as Keppler & Co., or their  
attorney, Sidney W. Eldridge:

PLEASE TAKE NOTICE that the Prosecutors add the following reason to those already specified, namely:

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10. That under the circumstances in this case, the Judge of said Bergen County Circuit Court was without power or authority to vacate the lien and levy on certain property mentioned in the Sheriff's return or to restrain the plaintiff from further pro-

*Notice of Amendment of Reasons.*

ceeding in said cause, or to release property so attached, or postpone the plaintiff's prior lien thereon, and order said property to be turned over to an Auditor appointed by the New Jersey Supreme Court in the matter of Keppler & Co., vs. Charles W. Owen.

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AND TAKE FURTHER NOTICE that I shall apply to the Supreme Court at Trenton on the third Tuesday of January next, upon the opening of said Court at the State House in Trenton for leave to amend the reasons as specified above and argue the same upon the hearing of the cause.

REX B. ALTSCHULER,  
Attorney of Prosecutors.

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(Endorsed):

Service of a copy of the within Notice is hereby acknowledged this 3rd day of January, 1928.

SIDNEY W. ELDRIDGE,  
Attorney of Respondents.

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**Opinion of Supreme Court.**  
NEW JERSEY SUPREME COURT,

No. 271

January Term, 1928

10	<p style="text-align: center;">ROBERT A. ALTSCHULER and ARTHUR L. ROBINSON, <i>Prosecutors,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">NEWTON H. PORTER, Circuit Court Judge; EMIL A. C. KEPPLER and MAX H. KEPPLER, partners, trad- ing as KEPPLER &amp; COMPANY, and CLARENCE MABIE, <i>Respondents.</i></p>	} On Certiorari
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Before—Justices TRENCHARD, KALISCH and KATZEN-  
BACH.

For the prosecutors: REX B. ALTSCHULER.

For the respondents: SIDNEY W. ELDRIDGE.

*Per Curiam:*

This matter comes before us by writ of certiorari, to review the legal propriety of an order made by Newton H. Porter, the Circuit Court Judge, holding the Circuit in Bergen County, in an attachment proceeding instituted in said Circuit, by Robert Altschuler, plaintiff *v.* Charles W. Owen, defendant, setting aside an order previously made by the Circuit Court appointing an auditor in said attachment proceeding. The facts are fully set forth in the opinion of Judge Porter. We concur in his views as stated by him in the opinion. The opinion is as follows:

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*Opinion of Supreme Court.*

"The facts which were stipulated by counsel on this motion are, in part, as follows:

(1) Keppler & Co., brought an attachment suit against Charles W. Owen, an absconding and non resident debtor, on August 3, 1926, for \$58,840.88. A writ was delivered to the Sheriff of Bergen County on August 4, 1926, returnable August 23, 1926, whereupon he levied on certain residence property and contents. This writ was returned to the Clerk of the Supreme Court by the Sheriff on August 13, 1926. 10

(2) On August 10, 1926, an attachment suit was brought in the Bergen County Circuit Court against said Owen by Robert A. Altschuler for \$5,512.50 and a writ of attachment issued on that date returnable on September 14, 1926. Said writ was delivered to the Sheriff on August 10, 1926 and he levied on that date on twenty shares of stock of United Bond & Mortgage Co., and a certificate of membership in the Hackensack Golf Club all standing in the name of the said defendant. 20

(3) An auditor was appointed by the Supreme Court on August 26, 1926, and an auditor was appointed by the Circuit Court on September 14, 1926. 30

(4) On August 26, 1926 an alias writ of attachment was issued out of the Supreme Court in the Keppler suit aforesaid directed to the Sheriff of Bergen County who thereunder on August 31, 1926 levied upon the twenty shares of stock of United Bond & Mortgage Co. and the certificate of membership in the Hackensack Golf Club aforesaid. 40

*Opinion of Supreme Court.*

10 (5) On September 18, 1926, a pluries writ of attachment was issued out of the Supreme Court in the Keppler suit aforesaid directed to the Sheriff of Bergen County, who thereunder on October 8, 1926, levied upon the twenty shares of stock of United Bond & Mortgage Co., and the certificate of membership in Hackensack Golf Club aforesaid.

It seems settled under the decisions of this state that more than one writ of attachment may issue out of the same court against the same defendant at the suit of different plaintiffs, but that but one such suit be permitted to go to judgment and but one auditor shall be appointed.

20 The legislative intent was to conserve the property of an absent or absconding debtor for the benefit of the attaching and applying creditors, to take the property into the custody of the laws and to administer it for that purpose.

Harris *v.* Linnard, 9 N. J. L. 58;  
 Cummins *v.* Blair, 18 N. J. L. 151;  
 Brundred *v.* Del Hoyo, 20 N. J. L. 328;  
 Brown *v.* Bissett, 21 N. J. L. 46;  
 Buffin *v.* Wolf, 21 N. J. E. 475;  
 Blachford *v.* Conover, 40 N. J. E. 205;  
 30 Woodward *v.* Lishman, 80 N. J. L. 586.

The case at bar, however, is distinguishable from all of the above cited cases in that the writs were not issued out of the same court and the property levied on was not the same. No case is cited which covers this situation. Nor have I found any. In principle, however, I see no difference. The writ in the Supreme Court suit was issued and executed prior to the Circuit Court writ and is therefore the senior writ and should take precedence. This is  
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*Opinion of Supreme Court.*

so notwithstanding the fact that different property was levied on under the original writs.

The auditor appointed by the Supreme Court in the Keppler suit should administer all of the property levied on for the benefit of the plaintiff in that suit and applying creditors thereunder as provided by statute. 10

The appointment of the Auditor in the Altschuler Circuit Court suit should be set aside.

An order will be signed in accordance with these views."

For the reasons stated in the opinion, the certiorari is dismissed with costs.

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## Notice of Appeal.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">ROBERT A. ALTSCHULER and ARTHUR L. ROBINSON, <i>Prosecutors,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">NEWTON H. PORTER, Circuit Court Judge; EMIL A. C. KEPPLER and MAX H. KEPPLER, partners, trad- ing as KEPPLER &amp; COMPANY, and CLARENCE MABIE, <i>Respondents.</i></p>	}	On Certiorari.
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To SIDNEY W. ELDRIDGE,  
Attorney of Respondents:

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TAKE NOTICE that the Prosecutors appeal to the Court of Errors and Appeals in the Last Resort in all Causes in New Jersey from the whole of the judgment entered in this cause.

Dated December 19th, 1928.

REX B. ALTSCHULER,  
Attorney of Appellants.

30

Endorsement on Back:

Due and legal service of a copy of the within Notice of Appeal is hereby acknowledged this 21st day of December, 1928.

SIDNEY W. ELDRIDGE,  
Attorney of Respondents.

40

## Grounds of Appeal.

### NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors-Appellants,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge; EMIL A. C. KEPPLER and  
MAX H. KEPPLER, partners, trad-  
ing as KEPPLER & COMPANY, and  
CLARENCE MABIE,  
*Respondents.*

On Writ of  
Certiorari.

On Appeal from  
Supreme Court.

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The Prosecutors-Appellants specify as Grounds of Appeal herein:

1. The Supreme Court erred in giving judgment for the Respondents instead of for the Prosecutors-Appellants.

REX B. ALTSCHULER,  
Counsel for Prosecutors-Appellants.

Endorsement on Back:

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Due and legal service of a copy of the within Grounds of Appeal is hereby acknowledged this 5th day of January, 1929.

SIDNEY W. ELDRIDGE,  
Counsel for Respondents.

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## New Jersey Court of Errors and Appeals

ROBERT A. ALTSCHULER and  
ARTHUR L. ROBINSON,  
*Prosecutors-Appellants,*

*v.*

NEWTON H. PORTER, Circuit Court  
Judge, EMIL A. C. KEPPLER,  
and MAX H. KEPPLER, partners  
trading as KEPPLER & COMPANY,  
and CLARENCE MABIE,  
*Respondents.*

On Certiorari.  
On Appeal  
from  
Supreme  
Court.

### BRIEF OF PROSECUTORS-APPELLANTS.

This proceeding is the contention arising between two attaching creditors of property belonging to the same defendant.

On August 3rd, 1926, Keppler & Company issued an attachment under the provisions of the Attachment Act of 1901, out of the New Jersey Supreme Court and levied upon certain real estate, chattels and credits as specified in Stipulation of Facts, par. 2 and 3 (Case, pp. 51-52).

On August 10th, 1926, the prosecutor here, Robert A. Altschuler, issued a writ of attachment under the provisions of the Attachment Act of 1901, against the same defendant out of the Bergen County Circuit Court, and on the same day the Sheriff of Bergen County made a levy thereunder on the right, title and interest of Charles W. Owen in twenty (20) shares of stock of the United Bond and Mortgage Co. at the office of said company,

and upon one Active Membership Certificate in the Hackensack Golf Club, as appears by the return of said Sheriff (Case, p. 4) and Stipulation 7 and 8 (Case, pp. 52-53).

On August 26, then, next, an Alias Writ of Attachment was issued out of the New Jersey Supreme Court in the Keppler suit, and on August 31, 1926, the Sheriff of Bergen County thereunder, made return of levy upon the same twenty (20) shares of stock of the United Bond and Mortgage Co. and the membership certificate of the Hackensack Golf Club, as appears by return thereon (Case, p. 41).

On September 18, 1926, Keppler & Company issued a Pluries Writ and the Sheriff of Bergen County again levied on the same twenty (20) shares of capital stock of the United Bond and Mortgage Co. and the membership certificate of the Hackensack Golf Club as appears in Stipulation (Case, pp. 56-57).

And again on August 14, 1926, Keppler & Co. issued a writ directed to the Sheriff of Essex County, which Sheriff, on October 15, 1926, attempted to levy on the Hackensack Golf Club membership certificate in the hands of the attorneys for the wife of defendant, at their office in Newark, as appears by Stipulation, p. 25 (Case, p. 57).

It is also admitted and appears in the State of Case that Auditors were appointed in each suit, namely, Arthur L. Robinson, in the Circuit Court proceeding, and Clarence Mabie, in the Supreme Court action, after which application was made by Keppler & Company in the Bergen County Circuit Court by Petition (Case, pp. 11-16) and Rule to Show Cause issued thereon resulting in an Order of said Circuit Court, dated December 31, 1926 (Case, p. 24) vacating the appointment of

Arthur L. Robinson as Auditor, restraining plaintiff, Robert A. Altschuler, from further prosecuting his suit; and postponing the levy thereunder on said twenty (20) shares of stock, and Hackensack Golf Club membership certificate to the lien and levy on the same chattels under the Supreme Court writs, and adjudging that the Auditor, Clarence Mabie, is entitled to have said shares of stock and certificate.

This Order is the subject of the attack by Prosecutors and plaintiff in said Circuit Court action, as being without warrant or authority of law, under the circumstances of the case. It is here pointed out that in addition to the Reasons specified and served herein (Case, pp. 59-62), Prosecutor has given notice of additional Reason, specifying that said Circuit Court was without power or authority to make said Order, which was served with Notice of application to the Court for leave to so amend and argue the same (Case, pp. 62-63) and the Prosecutor hereby makes application for such leave.

While the case presents the full record of proceedings by way of returns to this writ, and reasons are specified in various forms, the real question controlling the disposition of this case can be best presented and argued on the main contention that the record herein shows that a first and prior lien upon the twenty (20) shares of United Bond & Mortgage Co. stock and membership Certificate of the Hackensack Golf Club was acquired by levy under the Circuit Court writ and that consequently, said Circuit Court was without power and authority to vacate the proceedings had in that cause, and restrain plaintiff in that action, and postpone such lien and levy to the subsequent levy thereon under the Supreme Court writ. This contention is more concisely expressed and summarized under Reason 9 and additional Reason 10 (Case, pp. 61-62).

## POINT I.

**The record shows plaintiff in the Circuit Court writ acquired a prior lien on the specified chattels.**

By the Attachment Act of 1901, the Circuit Court is given concurrent jurisdiction with the Supreme Court in attachment actions.

SECTION 1, Attachment Act (P. L. 1901, p. 158), provides: Attachments shall issue out of the Supreme Court, Circuit Court and Common Pleas Court at the suit of any plaintiff, etc.

SECTION 27, Attachment Act (P. L. 1901, p. 169), provides; that a debt of plaintiff in an attachment action shall be paid prior to the debt of an applying creditor. It gives to the plaintiff in an attachment action priority. The record shows that the Act was complied with by plaintiff.

The sheriff's return on the Bergen County Circuit Court writ (Case, p. 4) is dated August 10, 1926. On none of the writs issued out of the Supreme Court is there any return of a levy on the particular chattels until August 31, 1926.

SECTION 7, *Attachment Act* (P. L. 1901, p. 160), provides, *inter alia*, the writ shall bind the attached rights and credits, moneys and effects, goods and chattels, of the defendant from the time of executing the same. Therefore, under the express wording of Section 7 of the Attachment Act of 1901, plaintiff's writ must be given priority.

In *Woodward, et al. v. Lishman*, New Jersey Supreme Court, 78 Atl. 701, 80 N. J. Law 586, in a decision handed down January 13, 1911, by Justice TRENCHARD, it was held:

"The Attachment Act (P. L. 1901, pp. 160-173, paragraphs 7 and 37) provides that the

writ shall bind the attached property of the defendant from the time of executing the same, and the manner therein prescribed; that is, from the time of levying upon the property.

The moment of levy is, therefore, the material point of time in determining which of two or more attachments is senior to the other.

4 Cyc. 643.

The Act of 1901 not providing for a pro rata distribution among attaching creditors, and being silent as to priority of writs of attachment, and containing no provision for supercedeas of Small Cause Court writs, we are of the opinion that such writs issued out of the Small Cause Courts, if first executed according to law, are liens upon the attached property prior to the lien of an attachment subsequently issued out of the Circuit Court.

In the present case, petitioner's writs being first executed, had priority of lien. The petitioner's writs not only had priority of lien, but entitled the constable making the levies thereunder to the possession and control of the attached property for the purpose of enforcing such liens, and the wrongful dispossession of such constable by the Sheriff under the junior writ out of the Circuit Court did not release the lien of petitioner's writs. It has been held by this Court that one attachment issued and served is no bar to the issuance and service of another in the same County against the same defendant by another creditor.

*Brown v. Bissett*, 21 N. J. Law 46;

*Duffin v. Wolf*, 21 N. J. Law 475;

*Cummins v. Blair*, 18 N. J. Law;

*Gumbel v. Pitkin*, 124 U. S. 131.

Under such a statute as that of 1901 containing no provision for the pro rata distribution among attaching creditors, nor as to priority of writs, nor as to supercedure, WHERE PERSONAL PROPERTY LEVIED UPON UNDER A WRIT is further levied upon by the same or

another officer, such further levy is subject to the prior levy or levies.

4 *Cyc.* 603.

And where a subsequent levy is made by another officer, the possession of the first officer is not to be disturbed.

4 *Cyc.* 604.

THE FIRST LEVY NOT ONLY GIVES PRIORITY of lien, but it entitled the officer making the first seizure to the possession and control of the property.

*Wade on Attachments*, 217.

*Drake on Attachments*, 267.

And wrongful dispossession of the officer does not have the effect of releasing the attachment lien.

*Clow v. Gilbert*, 51 Ill. App. 134;

*Butterfield v. Clemence*, 10 Cushing (Mass. 269);

*Beech v. Abbott*, 6 Vt. 586;

*Harrison v. Gray*, 108 Mass. 229;

3 *Am. & Eng. Enc. of L.*, 2d Ed. 240;

4 *Cyc.* 656.

The petitioner's attachments having priority of lien over the Circuit Court should be first paid and satisfied in the order of their priority from the proceeds of the sale made by the Auditor."

It may be the contention of the respondents that the levy made under the Circuit Court writ on the twenty (20) shares of United Bond and Mortgage Co. stock did not comply with "An Act to Make Uniform the Law of Transfer of Shares of Stock of Corporations" Chapter 191, P. L. 1916, wherein Section 13 provides: "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until said certificate be actually

seized by the officer making the attachment or levy, or BE SURRENDERED TO THE CORPORATION WHICH ISSUED IT, or its transfer by the holder be enjoined, etc.”

The Act is complied with when an outstanding certificate is surrendered to the corporation which issued it. The Sheriff's return (Case, p. 4) shows that the certificate was in the possession of the company which issued it at the office of the United Bond & Mortgage Co., at State Street, Hackensack, N. J. at the time of the levy. The testimony of Louis Turro, Deputy Sheriff, who made the levy (Case, pp. 34-35) and Stipulation, Paragraph 8 (Case, p. 53) leaves undisputed the fact that the twenty (20) shares of capital stock of the United Bond & Mortgage Co. were already in the possession of said company at its registered office on State Street, Hackensack, at the time the levy was made.

The company being in possession of the certificate on August 10th, 1926, the Act was complied with, because the officer could not surrender a certificate to the company which already had possession of said certificate.

## POINT II.

**The Bergen County Circuit Court, therefore, was without power or authority to make its order of December 31, 1926.**

Plaintiff having made the first levy which bound the goods and chattels under Section 7 of the Attachment Act and secured the appointment of an Auditor was then, upon petition of Keppler & Co., restrained from further action, and the goods and chattels thereby turned over to another Court and priority of payment given to the plaintiff in at-

tachment in the Circuit Court action under Section 27 of the Attachment Act (P. L. 1901, p. 169) taken away, and the Bergen County Circuit Court, by its order of December 31, 1926, thereupon entirely deprived plaintiff of proceeding further or perfecting his rights given to him by the Act of 1901.

This was done notwithstanding the fact that Keppler & Company was not a party to the Circuit Court action; nor were they applying creditors therein, but the order resulted, however, in turning over these chattels into the suit where they were plaintiffs, and where they consequently claimed priority of payment in that suit.

Nowhere in the statute is any such power given or implied to authorize a court to deny a plaintiff in attachment, proceeding in due course, to be deprived of his rights of priority of payment out of property first attached in his own cause.

### **Summary and Conclusion.**

Upon reading the Opinion of the Supreme Court it would appear that the reasons they gave for dismissing Prosecutor's writ herein were based upon cases prior to Attachment Act of 1901 to the effect that where more than one writ issues out of the same Court at the suit of different plaintiffs, only one suit should be permitted to go to judgment and but one auditor appointed. The Opinion acknowledged this case differs in that Prosecutor's writ and Respondent's writs were not issued out of the same Court and the property levied upon originally was not the same.

The Court did not discuss the provision of the present statute respecting priority of levies and procedure. No notice is taken of the express provision permitting writs to issue out of various courts, without any provision as to supercedeas of a writ of one court over another, and the provi-

sion that a writ shall bind goods and chattels from the time of executing the same and especially the provision of Section 27 providing that the debt of a plaintiff in attachment shall be paid prior to the debt of applying creditors. It is admitted that the first levy on the 20 shares of United Bond & Mortgage Co. stock and the Gold Club Membership Certificate was made under Prosecutor's writ. The Prosecutor, as plaintiff in that attachment action, is entitled to be paid prior to the debt of other creditors as to property first levied upon under his writ and the effect of the affirmance of the Order of the Circuit Court and the dismissal of the Writ of Certiorari by Supreme Court directly deprived Prosecutor of his priority of payment in that this property was ordered turned over to the auditor appointed in the suit brought by Respondents as plaintiffs in the Supreme Court.

The Order to turn over further does violence to express provisions of the statute permitting plaintiffs to issue attachments out of various courts named, and providing for priority of payment of such plaintiff's debt and the statute nowhere makes provision for any supercedeas or priority as between writs issued out of different courts; yet the opinion of the Court below holds that the writ in the Supreme Court suit was issued and executed prior to the Circuit Court writ and is therefore the senior writ and should, therefore, take precedence. This is not supported by any citation or reference to the statute, the provisions of which are directly to the contrary; certainly as to property first levied upon and bound by a plaintiff who is given priority of payment out of the property attached. The statute nowhere provides for priority of one writ over another by reason of priority of time of tissue but the only priority that is provided for in the Act is that of a plain-

tiff in attachment who first levies upon and thus binds any specific personal property. Yet the Court below ordered the specific property first attached under Prosecutors' writ to be turned over to the Auditor of the Supreme Court suit for the benefit of plaintiff in this suit. This, we submit, the Court had no power to do under the facts of this case and the Order of the Supreme Court and the Order of the Court below should be reversed.

Respectfully submitted,

REX B. ALTSCHULER,  
Counsel for Prosecutors-Appellants.

New Jersey Court of Errors and Appeals.

ROBERT A. ALTSCHULER *et al.*,  
*Prosecutors-Appellants,*

—vs.—

NEWTON H. PORTER, Circuit  
Court Judge, *et als.*,  
*Respondents.*

On Certiorari.

**BRIEF FOR RESPONDENTS EMIL A. C.  
KEPPLER AND MAX H. KEPPLER,  
PARTNERS TRADING AS KEP-  
PLER & CO., AND CLARENCE  
MABIE.**

On August 3, 1926, Keppler & Co. caused a writ of attachment to be issued out of the Supreme Court against the rights and credits, etc., of Charles W. Owen, an absconding and non-resident debtor, for Fifty-eight Thousand Eight Hundred Forty Dollars and Eighty-eight (\$58,840.88) Cents, returnable August 23, 1926. The writ was issued under the provisions of the Attachment Act of 1901 (Compiled Statutes, p. 132, Sec. 1). On August 4, 1926, the writ was delivered to the Sheriff of Bergen County, who by virtue thereof seized the interest of the defendant in a piece of real estate standing in the names of the defendant and his wife, and certain personal property, consisting principally of household furniture. After making this levy, the Sheriff sent the writ, with his return, to the Clerk of the Supreme Court, who received it August 13, 1926.

The writ was returnable as above stated, August 23, 1926 (Ex. D-4, p. 51).

An alias and a pluries writ were subsequently issued, and to them reference will hereinafter be made.

The defendant did not appear in the attachment suit, and the same took its normal course and resulted in the entry of a judgment on December 7, 1926, in favor of Keppler & Co. for Sixty Thousand Fifty-seven Dollars and Ninety-eight (\$60,057.98) Cents, and in favor of an applying creditor, National Supply Company of Texas, for Thirty-two Hundred Seven Dollars and Seventy-eight (\$3207.78) Cents.

In the course of the proceedings, Mr. Clarence Mabie was appointed auditor (54, par. 10) and realized from the sale of all of the attached property and estate of the defendant approximately Five Thousand Dollars, this sum including Twenty-four Hundred Ninety (\$2490) Dollars realized on the sale of certain stock which will hereinafter be referred to, and is the property forming the subject matter of this contest.

On August 10, 1926, Robert A. Altschuler, one of the prosecutors herein, caused a writ of attachment to be issued out of the Bergen County Circuit Court against the same defendant aforesaid, Charles W. Owen, a non-resident debtor, for Fifty-five Hundred Twelve Dollars and Fifty (\$5512.50) Cents, under the Attachment Act of 1901. This writ was returnable September 12, 1926, and was delivered to the Sheriff of Bergen County on the date of its issue (52, par. 6). The Sheriff levied, or attempted to levy (whether a valid levy was made is in dispute), on twenty shares of the capital stock of United Bond and Mortgage Company and a certificate of active

membership in Hackensack Golf Club, both standing of record in the name of the defendant, Charles W. Owen (53, par 8).

On August 26, 1926, Keppler & Co. obtained an alias writ of attachment out of the Supreme Court, directed to the Sheriff of Bergen County, returnable September 15, 1926, and it was delivered to said Sheriff on August 27, 1926 (54, par. 15). On August 31, 1926, under the alias writ, the Sheriff levied upon certificate #11 for twenty shares of the capital stock of United Bond and Mortgage Company, and on the 9th day of September, 1926, upon certificate #217 of active membership in Hackensack Golf Club, both certificates issued to Charles W. Owen, the defendant, and standing of record in his name, as aforesaid. The manner of this levy appears in Exhibit D-4 (Case, p. 54, pars. 16, 17 and 18), also Exhibit D-1 (Case, pp. 41 to 46, both inclusive).

There being a doubt as to the constitutionality of the Uniform Stock Transfer Act, to which reference will be hereinafter made, Keppler & Co. obtained a pluries writ of attachment on the 18th day of September, 1926, under which a further levy was made on the stock and membership certificate aforesaid, in conformity with the requirements of law prior to the passage of said act (Exhibit D-4, Case, pp. 56, 57, par. 20, 23).

In the Circuit Court suit of Altschuler v. Owen, the Bergen County Circuit Court, by order dated September 14, 1926, appointed Arthur L. Robinson auditor (Exhibit D-4, p. 54, par. 13).

Possession of the stock certificate aforesaid and the membership certificate having been demanded by Mr. Mabie, the auditor in the Keppler suit, and refused, Keppler & Co. filed their petition in the Bergen County Circuit Court in the attach-

ment suit of Robert A. Altschuler v. Charles W. Owen (Case, pp. 11 to 16), praying that the Altschuler writ

“be quashed or \* \* \* vacated as to the \* \* \* twenty shares of stock of United Bond and Mortgage Company and the certificate of active membership in Hackensack Golf Club, or that the levy under said writ and the lien thereof \* \* \* be postponed to the levy made under the prior writ issued out of the New Jersey Supreme Court at the instance of \* \* \* petitioners \* \* \* and that all proceedings in said Circuit Court action, including the order appointing \* \* \* auditor \* \* \* be vacated and set aside, and the further prosecution of said Circuit Court suit by the said Robert A. Altschuler \* \* \* be restrained; and that said United Bond and Mortgage Company \* \* \* be required to surrender up and deliver to \* \* \* petitioner, Clarence Mabie, the certificate for the twenty shares of stock of said company, etc.”

Rule to show cause was allowed October 4, 1926, on this petition (Case, pp. 17 to 20, incl.) and after a hearing the Judge of the Bergen Circuit filed an opinion (Case, pp. 21 to 23, both incl.) and made an order dated December 31, 1926 (Case, pp. 24 and 25), vacating the order appointing Arthur L. Robinson auditor in the Altschuler suit, restraining the further prosecution of such suit, and postponing the lien of the levy under the Circuit Court writ to that made under the Supreme Court writ, adjudging that the auditor in the Supreme Court suit was entitled

“to have and receive twenty shares of stock of United Bond and Mortgage Company standing in the name of the defendant, Charles W. Owen, and the certificate thereof and the certificate of active member-

ship of Charles W. Owen in Hackensack Golf Club, and the proceeds of sale thereof, to the end that he may administer such property for the benefit of the plaintiffs and the applying creditors in said Supreme Court suit, in accordance with the directions of the statute in such case made and provided."

The writ of certiorari in this case brings up for review the order last aforesaid.

For a supplemental statement of facts see "Exhibit D-4" (Case, pp. 51 to 59).

On October 21, 1926, the Supreme Court allowed a rule to show cause, directed to Charles W. Owen and others, on the petition of Keppler & Co., which rule contained an *ad interim* restraint upon the transfer and delivery of the two certificates aforesaid, which restraint was imposed upon the several individuals named therein. The hearing on this petition and rule was continued from time to time, and after the order under review was made, the Supreme Court, by its order dated February 23, 1927, made absolute the rule to show cause aforesaid as to the defendant Charles W. Owen, and imposed upon him a restraint against selling or transferring the certificates aforesaid, and the rights represented thereby, or making any other disposition thereof (Exhibit D-4, p. 58, par. 27; Exhibit D-3, Case, pp. 48 to 50).

The prosecutors specify nine reasons and give notice of an application for leave to file a tenth reason (Case, pp. 59 to 62, and 62 to 63). The first asserts the validity of the Altschuler levy; the second, third and ninth its priority over the levy under the Keppler writ; the fourth that the issuance of the Keppler writ and its delivery to the sheriff did not create a lien on the stock and membership certificates; the fifth, concurrent jur-

isdiction of the Supreme and Circuit Court in attachment actions; the sixth that the priority among attachments is dependent upon which is prior in point of time; the seventh, the power of the Circuit Court to appoint its own auditor and the Court whose officer first seizes must distribute; the eighth, property in the possession of one court for administration is not liable to be seized under process from another court; the tenth, to add which leave was given in the Supreme Court, is directed against the jurisdiction of the Circuit Court "to vacate the lien and levy (under the Altschuler writ), to restrain the plaintiff from further proceeding in the cause, to release property attached, or postpone the plaintiff's lien, and order the property turned to the auditor appointed in the Keppler suit."

The only real meritorious question raised in these proceedings is the priority of the respective writs of attachment of the two creditors, namely, Keppler & Co. and Altschuler.

The only factual question in dispute seems to be whether the levy attempted under the Altschuler writ sufficiently meets the requirements of the Attachment Act of 1901 and the Uniform Stock Transfer Act.

***The Levy Under the Altschuler Writ is Not Sufficient to Create a Lien Upon the Stock and Membership of the Defendant Owen.***

(a) Section 7 of the Attachment Act (Comp. St., p. 137) defines the manner of executing a writ and directs that the sheriff

"shall execute the same by going to the house or lands of the defendant, or to the

person or house of the person having custody or possession of the defendant's property and estate, and then and there declare in the presence of one credible person at least, that he attaches the rights and credits, moneys and effects, etc. of the defendant at the suit of the plaintiff; and with the assistance of one discreet and impartial freeholder, he shall make a just and true inventory and appraisement, signed by him and the freeholder, of all the property and estate of the defendant so by him attached, and annex the same to and return it with the writ, etc."

The return of the Sheriff of Bergen County to the Altschuler writ (Case, pp. 4 to 6 inclusive) indicates that the execution of the writ was attempted on August 10, 1926

"by going to the property of Charles W. Owen at the United Bldg. & Loan Co., State St., Hackensack, N. J." (p. 6, ll. 10 to 13.)

The inventory and appraisement is to the effect that the attachment was made

"at the office of the United Bldg. & Loan on State St., Hackensack, N. J."

The writ should have been executed at the registered office of United Bond and Mortgage Company.

Louis Turro, the officer deputized to execute the writ, was sworn in these proceedings (Case, pp. 31 to 35), but it does not appear from his testimony where the attempted levy was made. His testimony is very unsatisfactory, as will be pointed out later.

The inventory and appraisement, which is intended to conform to the statutory requirements

above mentioned, (Case, p. 4,) fails in that respect. There is no appraisalment of the stock of United Bond and Mortgage Company, nor is the inventory and appraisalment signed by the sheriff, the officer to whom the writ is directed. The words used in this inventory and appraisalment are merely descriptive of the stock, specifying its par value to be One hundred Dollars. With respect to the membership certificate, the return states that it was valued at Five hundred Dollars. If it be contended that the return to the writ, (p. 6) supplies the missing valuation,, which is there stated to be Two thousand Dollars, the answer is that such return is not signed by the "discreet and impartial freeholder" as required by the statute.

It is true that a substantial compliance with the provisions of the Attachment Act is all that is required, but the cases uniformly hold that there must be an inventory and appraisalment of the attached property, signed by the sheriff and the "discreet and impartial freeholder."

*Boyd v. King*, 36 N. J. L., 134, 136;  
*Tomlinson v. Stiles*, 28 Law 201, 204;  
*Franklyn v. Taylor Hydraulic etc. Co.*,  
 68 N. J. L., 113;  
*Cord v. Newlin*, 71 N. J. L., 438, 441;  
*Morrel v. Buckley*, 20 N. J. L., 667, 669;  
*Castner v. Styer*, 23 N. J. L. 236;  
*Curtis v. Stever*, 36 N. J. L., 304;  
*Neal v. Cook*, 10 N. J. L., 337.

(b) The levy under the Altschuler writ was not made in conformity with the requirements of Chapter 191 of the Laws of 1916 (p. 398, Sec. 13), reading as follows:

"No attachment or levy upon shares of

stock for which a certificate is outstanding shall be valid until such certificate be *actually seized* by the officer making the attachment or levy, or *be surrendered* to the corporation which issued it, or *its transfer* by the holder *be enjoined*."

This provision of the Uniform Stock Transfer Law has been declared constitutional. (*Wallach v. Stern*, 103 N. J. L., p. 470.)

The certificate covering stock of United Bond and Mortgage Company was issued February 18, 1926 (Case, p. 30, ll. 33 to 36; Exhibit D-4, p. 57, Sec. 24), and the certificate of active membership in Hackensack Golf Club on August 10, 1925 (Exhibit D-4). Under the terms of the statute, these two certificates were outstanding at the time of the levies in question. Until the sheriff "actually seized" these certificates, took them into his possession (*Mulock v. Ulizio*, 4 N. J., Adv. Rep., 258; *Wallach v. Stern*, *idem.* 790), or the certificates were surrendered to the issuing corporations, or their transfer enjoined, the attachment was invalid.

It is obvious from the sheriff's return and the testimony of the deputy sheriff, Louis Turro, (Case, pp. 31 to 35 inclusive) that neither certificate was actually seized, nor does it appear that the certificates were in the possession of the issuing corporations, whether by surrender or otherwise, at the time an attempt was made to execute the Altschuler writ. The sheriff's return to the Altschuler writ (p. 6) makes no mention of the certificate covering the shares of the bond and mortgage company, but does refer to the membership certificate. The inventory and appraisal (p. 4) makes no mention of the former certificate, but does of the latter.

Both certificates being outstanding at the time of the issuance of the Altschuler writ, and its attempted execution, no presumption arises from the particular return in this case that the certificate evidencing the ownership of the stock of United Bond and Mortgage Company was in the possession of that corporation, and the sheriff's return should indicate either the actual seizure of the stock and membership certificates, or the possession thereof by the issuing corporations, such possession having been acquired by surrender. The surrender may be made by the owner or the person entitled to possession. It is submitted that it is not enough to show that the issuing corporation had possession of these certificates, but how possession was acquired, that is, by surrender, should also be shown. If the statute intended that the possession of the issuing corporation, no matter how acquired, was sufficient, it would have used apt words to express such intent.

It appears that when the levy was made under the alias Keppler writ, August 31, 1926, the stock certificate then in the possession of the issuing corporation, was "actually seized" by the sheriff, and by him surrendered to said company. The membership certificate finally came into the possession of the auditor, and was sold by him along with the shares of United Bond and Mortgage Company (54, par. 16).

Upon the subject of the attempted levy under the Altschuler writ, Louis Turro,, a deputy sheriff of Bergen County, testified (pp. 31 to 35, both inclusive). He was deputized to execute the Keppler alias writ and the Altschuler writ. His recollection was poor, and his testimony unsatisfactory.

When the Keppler alias writ (Exhibit D-1, p. 41) was delivered to the Sheriff of Bergen County,

it was accompanied by a letter of instruction as to the method of executing it, so as to conform with the requirements of the Uniform Stock Transfer Law. On August 31, 1926, the date of the levy under the Keppler writ, another letter (Exhibit D-2, Case p. 47) was delivered to the sheriff, containing additional instructions, along with a copy of the alias writ.

Turro was asked whether he was familiar with the provisions of the Uniform Stock Transfer Law, and replying in the affirmative, he was asked the source of his familiarity, and answered that he obtained it thru his experience when levying on the certificate of membership in Hackensack Golf Club under the Keppler writ, which levy was made prior to that under the Altschuler writ (Case, p. 32, ll. 15 to 35). He denied having levied on the stock of United Bond and Mortgage Company under the Keppler writ when asked the specific question whether he did so, (p. 32, bottom) and when the same question was put in different form, he answered in the affirmative (Case, pp. 32 and 33).

When asked the question:

“Then the first levy you made on stock was made under the Keppler writ, is that so?”

the witness answered:

“Yes, I did” (Case, p. 33, ll. 3 to 6).

When asked what he levied on under the Altschuler writ, he replied:

“Twenty shares of stock in the United Bond and Mortgage Company, Hackensack, N. J.”

and when twice asked the question:

“Anything else?”

replied the first time:

“Well about six others, I guess.”

and the second time:

“No, just that certificate of the stock.”

As will appear from the inventory and return attached to the Keppler alias writ (Exhibit D-1, Case, pp. 41 to 43), five items were levied upon, so that when making his first answer, the witness undoubtedly had in mind the Keppler writ, and this answer bears out his earlier testimony that the Keppler writ was first executed, and that it was his experience with the Keppler writ that brought him familiarity with the requirements of the Uniform Stock Transfer Law.

Bearing in mind the absence of any reference to the stock certificate in the inventory and appraisal and return to the Altschuler writ, the witness was asked if he had levied on the stock certificate number eleven for twenty shares of the capital stock of United Bond and Mortgage Company, whether he would so have stated in his inventory, and answered in the affirmative, and when asked whether he recalled having done so, answered “Yes”. (Case, p. 33, ll. 25 to 35.)

The witness denies levying under the Altschuler writ on the membership certificate of Hackensack Golf Club, and under the Keppler writ on the stock of United Bond and Mortgage Company, altho in the first case his return shows a levy on the membership certificate, and he had previously testified as above noted, that he did make a levy under the Keppler writ on the stock of the

United Bond and Mortgage Company, prior to his levy under the Altschuler writ.

The witness was asked whether he ever saw certificate #11 issued by United Bond and Mortgage Company, to Charles W. Owen, the defendant, and answered as follows.

“Mr. Holley I believe had this certificate in his hand at that time (when the witness went to make the levy.) I stood outside the rail and Mr. Holley and Mr. Altschuler walked to the rear of the office. Mr. Holley came out with the certificate and Mr. Altschuler demanded me to come inside the rail, into the office part. I took out a copy of the writ of attachment, told him that I am there to attach the shares of the United Bond and Mortgage Company, in which you are president. I then in turn handed him a copy of the writ” (Case, p. 34, bottom, and 35, top).

“Q. That is what you did at the office at that time? A. Yes.

Q. Now on that occasion did you see the certificate of stock? A. Mr. Holley had it in his hand. That is the only one time.

Q. You are quite certain about that? A. Well, it was a piece of paper, that I am sure” (Case, p. 35).

Assuming that the testimony of the witness is entitled to acceptance as proof of what occurred when he levied under the Altschuler writ, notwithstanding his earlier testimony that his first levy was made under the Keppler writ, from which he obtained knowledge of the requirements of the Uniform Stock Transfer Law, still, it does not appear that this certificate of stock was actually seized by the witness for the sheriff. If it be conceded that the paper that Mr. Holley had in

his hands, although not identified as such by the witness, was in fact certificate #11 issued for twenty shares of stock of the mortgage company, it still does not appear how the certificate got into the possession of the issuing company. All that appears in the case is that what may or may not have been the certificate in question, was in the hands of the issuing corporation at the time of the levy under the Altschuler writ was attempted, which was neither actually seized by the sheriff, nor did he surrender it to the issuing corporation, but whether the corporation secured the possession by surrender of the certificate, it does not appear. The Uniform Stock Transfer Law has been involved in the following cases:

*Wallach v. Stern*, 4 N. J. Adv. Rep. 790;  
*Mulock v. Ulizio*, 131 Atl. Rep. 622.

***The Circuit Court Had Jurisdiction to Entertain the Petition of Keppler & Co. and Make the Order Under Review.***

*Clapp v. Ely*, 27 N. J. L. 553;  
*Limpert Bros. v. French & Sons*, 90 N. J. L. 601;  
*Woodward v. Lishman*, 80 N. J. L. 586;  
*McLaughlin v. Cross*, 68 N. J. L. 599;  
*Duffin v. Wolf & Noble*, 21 N. J. L. 475;  
*Brown v. Bissett*, 21 N. J. L. 46;  
*Brundred ads. Del Hoyo*, 20 N. J. L. 328;  
*Cummins v. Blair*, 18 N. J. L. p. 151.

***The Lien of the Writ of Keppler & Co. is  
Prior to the Altschuler Writ.***

This brings us to the main question involved in this controversy. No case can be found in New Jersey which disposes satisfactorily of this question on facts such as obtain in the case before the Court. Cases in foreign jurisdictions do not assist, because attachment is the subject of statute, and the different states have varying legislation on this subject. However, *Corpus Juris*, Vol. 6. page 304, (foot note) is authority to the effect that the following states have Attachment Acts similar to that in New Jersey, viz: Colorado, Delaware, Florida, Illinois and Indiana, but altho careful search has been made for authorities in these jurisdictions, which might assist in the disposition of the various questions raised, none can be found.

(a) The Altschuler writ should have been quashed by the Circuit Court, in accordance with the prayer of the petition of Keppler & Co., because only one writ of attachment can issue out of the upper courts against the same debtor under the Attachment Act of 1901 (Comp. St. Vol. 1, p. 132).

An examination of the machinery of this act demonstrates very clearly the intent that it should operate to bring about a general administration of the defedant's estate, insofar as such administration is required to satisfy the claims of the plaintiff, all applying creditors and those who prove their claims before the auditor.

A brief resume of the various provisions of this act will assist in disposing of this question.

*Section 6.*—Any creditor may take a rule admitting him as an applying creditor “whether his debt be due or not”.

*Section 8.*—The lien of the attachment continues until the debts of the plaintiff and the applying creditors are satisfied, and the term “applying creditors” includes “all creditors admitted under the attachment by rule of court, or who may have applied to the auditor and proved their claims before he shall have made his report”.

*Section 9.*—The attached property is to remain in the safekeeping of the officer, who shall receive reasonable compensation for the cost of storage, the wages of watchmen, or other expenses necessary to securely keep the property, such compensation to be paid out of the first moneys arising from the sale of the property.

*Section 10.*—The officer may break and enter to seize the goods and chattels of the defendant.

*Section 20.*—Notice of the issuing of the writ is to be published for four successive weeks.

*Section 21.*—An auditor is to be appointed with power to administer oaths and examine witnesses, and to adjust and ascertain the amounts due the plaintiff and each applying creditor, and to file a report, and the Court may fix an allowance to the auditor for his services and allow a special fee to the attorney for the plaintiffs, such allowances to be taxed in the costs and satisfied out of the defendant’s estate.

*Section 22.*—“For the discovery and detection of fraudulent practices” auditor may order the

sheriff "to bring before him the wife of the defendant or any other person" for examination "touching the acts, dealings, money, debts, effects, rights, credits, lands, tenements, property and estate of the defendant, and his secret or fraudulent grants and transfers of the same."

*Section 23.*—Auditor may issue his warrant to the sheriff to break open any house, etc., and "to seize and inventory money, goods, chattels, etc."

*Section 24.*—Auditor may institute a suit against any person indebted to the defendant, and the moneys recovered shall be paid to the auditor, and if judgment go against the auditor, he shall pay costs and may retain such costs out of any moneys coming into his hands.

*Section 25.*—Auditor may complete attached goods, rent real estate and insure property.

*Section 26.*—After final judgment auditor may make sale of real and personal property.

*Section 27.*—Auditor to convert attached property into money and pay the plaintiff "and distribute the residue of moneys, if any, equally, in proportion to the debt due to each, among the other creditors whose debts shall have been by the final judgment allowed." Auditor may make partial payments, from time to time, to the plaintiff and applying creditors as the moneys coming into his hands will allow.

*Section 29.*—Provides for suits by the auditor against the garnishee.

*Section 32.*—Plaintiffs may issue a *scire facias* after final judgment, against any garnishee, and

the moneys or property recovered shall be delivered to the auditor.

*Section 2.*—Provides that “alias and pluries writs may be entered and issued as required, without filing any further affidavit or order; from the Supreme Court, writs may issue in the same action into as many counties as the plaintiff may require.”

A careful examination of the decisions of the courts of this State fails to disclose any decision passing directly on the point now under discussion, but the opinion of older practitioners and some of the Judges seems to be that there may be but one writ at a time out of the upper courts.

The only reported cases which discuss the propriety of two writs are next below set forth, but none necessarily involved the disposition of this question.

The case which most nearly sustains the contention of the respondents is that of *Brundred v. Del Hoyo*, 20 N. J. L., page 328, in which it was sought to set aside a junior writ of attachment and the proceedings thereon, on the ground of the pendency of an earlier attachment. After pointing out the fact that there are insuperable difficulties in conducting two cases in attachment against the same defendant, the Court said, “I should therefore feel myself bound to set aside these proceedings \* \* \* if the first attachment had been regularly issued by a bona fide creditor in good faith.” The first suit lacking good faith, the second was sustained.

*Duffin v. Wolf and Noble*, 21 N. J. L. 495, an authority asserted in opposition to the relief

prayed, did not directly involve the right to issue more than one writ. An attaching creditor dismissed his suit before another creditor had time to apply for the benefit of the attachment, and the latter creditor sought to set aside the discontinuance. The Court held that only for fraud or bad faith could the discontinuance be set aside, and the motion was denied.

The Court said, at page 478:

“Nor has the creditor the least ground of complaint. He had an opportunity to apply to the court before the discontinuance of the attachment, or he might have sued out a writ of attachment in his own name, and thus have rendered his security undoubted.”

In justifying the statement with respect to the right to issue another writ, the Court at page 479 says:

“True, the court will not permit more than one of several attachments to proceed to judgment, nor do they encourage the issuing of a multiplicity of writs, and where writs are issued unnecessarily, or with design to multiply costs, the court may interfere to prevent the abuse of its process.”

In *Brown v. Bissett*, 21 N. J. L., page 46, which justifies the issuance of more than one attachment, in answering the contention that pending one attachment another cannot be issued out of the same court against the same defendant, at page 51 the Supreme Court says:

“But this is the case of a second attachment at the suit of other plaintiffs and for another cause of action. The second writ may be necessary for the safety of the subsequent creditors. The first may not be

executed; if executed, yet possibly it may be set aside for some defect in the proceedings. We find no provision that bars such second writ, although the court will appoint auditors in the first only, because such appointment effects all that the law requires."

In *Brundred v. Del Hoyo*, 20 N. J. L., page 328, the Supreme Court was urged to set aside attachment proceedings, on the ground that another attachment had previously been issued into the same county against the same defendant, at the suit of another creditor. At page 336 the Supreme Court says:

"The attachment first issued was against the defendant as an absconding debtor, and is now upon a rule to show cause why it should not be set aside as having been improvidently issued. If the pendency of this attachment were the only reason assigned for this motion, I should be inclined to stay proceedings in this cause until the determination of the first suit. *There are insuperable difficulties in conducting two cases of attachment against the same defendant in the same county at the same time.* These difficulties grow out of the provision of our Attachment Act, and will suggest themselves to the mind of the careful practitioner. The opinion of this court in *Cummins v. Blair*, 3 Har. 152, is decisive upon this point. The court says that 'If one suit is commenced by attachment it stops every other creditor from proceeding in the same county by attachment until the first suit is discontinued.' I should therefore feel myself bound to set aside these proceedings for the second reason assigned (pendency of prior suit) if the first attachment had been regularly issued by a bona fide creditor, in good faith."

In *Cummins v. Blair*, 18 N. J. L., page 151, at page 153, the Supreme Court says:

“The intent of the statute (Attachment Act) was to bind by a summary proceeding in rem. the estate of an absent or absconding debtor, for the general and equal benefit of all his creditors. As soon as the writ is served, the property is in the custody of the law, and the service operates as a lien in behalf not only of the plaintiff in attachment, but of every other creditor who presents his claim before there is a legal discontinuance \* \* \*. After one suit is commenced by attachment it stops every other creditor from proceeding in the same county by attachment, until the first suit is discontinued.”

In the dissenting opinion written by Justice Nevius, at page 156, he says:

“I can find in the statute no provision that the issuing of one attachment by a creditor is a bar to any other creditor taking out another writ. Every creditor may issue his writ of attachment, but the court to which they are returned will appoint auditors in one only, because such appointment effects all that the law requires.”

In *Harris v. Linnard and Jennings*, 9 N. J. L., 58, two writs were issued out of the same court in suits between the same parties. Motion was made to quash the second writ, and it was granted, the Court saying:

“There is no reason that there should be at the same time two attachments by the same parties in the same county. When they are issued in different counties, upon the return of the writ they proceed as one suit. But it is not so here, and the court has no authority to consolidate them as in other cases.”

"If there is a surplus after the payment of creditors who have applied under the attachment, they may take out a new attachment, but if there is no surplus, their remedy is gone." (*Mount v. Ely*, 2 Halstead, 83.)

"Only one judgment is to be entered in the attachment suit, and that judgment includes the debts found to be due to all creditors respectively, as well as those who come in under the attachment as the plaintiff, by whom the writ was sued out, etc." (*Blatchford v. Conover*, 40 N. J. Eq., 205-210.)

The Keppler suit is in the Supreme Court, and property of the defendant anywhere in the State of New Jersey may be reached under the writs that may be issued into every county by the provisions of the statute. If the original writ is not sufficient, alias and pluries writs may be issued, under which all of the property of the defendant may be taken for the purpose of satisfying the claims of the plaintiff and all applying creditors. How much property will be required to take care of the plaintiff's claims and those of applying creditors cannot be determined until after the entry of final judgment, and it would seem to be the duty of the plaintiff and the auditor appointed in the suit, to seek out all of the property of the defendant, so that there may be enough to pay all claims entitled to the benefit of the attachment. (*Watson v. Noblett*, 65 N. J. L. 506.)

It may be said that this argument would be stronger if applied to the original act, which provided that the property attached should be divided equally among the plaintiff and the applying creditors, but it will be noted that the decisions above quoted which touch upon the subject of multiple writs, were rendered before the change

in the former act. The change undoubtedly was made to aid a diligent creditor, upon whom fell the burden of gathering the estate of the defendant, protecting the same, and distributing it when converted to cash, among the various applying creditors. As was said in the case of *Brundred ads. Del Hoyo, supra*, "There are insuperable difficulties in conducting two cases of attachment against the same defendant, in the same county, at the same time". The suit does not proceed in an orderly manner and as provided by the statute, unless an auditor be appointed and publication of the issuance of the writ be made. These auditors must be paid for their services. The duty that is imposed upon one auditor is imposed upon all. He must seek out the property of the defendant and take as much as he thinks will be necessary to discharge the claims of the plaintiff and the applying creditors. He has no means of knowing how much money the defendant owes and how many creditors may apply to him for the benefit of the attachment. Then again, the creditor may be put to an election as to the suit for the benefit of which he will apply, and he takes the chance of picking the wrong suit. If he may apply in every suit, and the act, of course, contains no limitation upon his right to do so (and the same applying creditor, National Supply Company of Texas, has entered into both the Keppler and Altschuler suits, see Case, pp. 9 and 10), he is put to unnecessary trouble and expense in presenting his claims in the various suits, which may be more than two, and may, in fact, be in as many courts as we have counties in the State of New Jersey. He may also very readily make several collections of the same claim, for the defendant is absent, and the other applying creditors, who may be attempting the same thing, may not

be interested. Witnesses might be examined as many times as there are suits pending. Auditors would be in a constant wrangle as to the right to possession of personal property discovered. The expense of the numerous attachment suits, which involve payment of auditor's fees, attorney's fees and miscellaneous items of expense, such as is outlined in the statute, would greatly impoverish the estate of the defendant, and make his condition intolerable. It would be impossible to calculate the unnecessary burdens that would be placed upon our Courts growing out of the multiplicity of these suits. We would find the county courts in conflict with the Supreme Court, and I think it may be well said in the present case, that the proceeding of the Bergen County Circuit Court is interfering with the orderly conduct of the Keppler suit, and the administration of the defendant's estate by that Court, as contemplated by the Attachment Act. This legislation must be interpreted in the light of reason. Mr. Altschuler has the same right as any other creditor to come in under the Keppler attachment and share in any surplusage of his goods and chattels after the payment of the plaintiffs' claims. It is perfectly proper that the diligent creditor should have the benefit of his industry. He has always been given the benefit of his industry. The writ of attachment may be likened to the writ of execution. Under the latter writ the Sheriff is obligated to make the money of the plaintiff in the senior writ first. This obligation he cannot ignore to the detriment of the holders of the senior writ. The question has been asked whether a creditor, knowing of property that has not been seized under the senior writ, may not issue his own writ and levy upon such property, and apply it to the satisfaction of his own claims. It would seem that this question

should be answered by considering whether the interests of a number of applying creditors are to suffer, in order to benefit the single creditor who seizes the property, and also whether a single creditor should be permitted to interrupt the orderly administration of the defendant's estate, in accordance with the provisions of the Attachment Act, by withholding from that estate property which the act contemplates should be administered by the auditor. It may be necessary to choose the lesser of two evils. That this asset may be lost to the estate is true, but assets are frequently lost in receiverships by receivers, and trustees in bankruptcy, but yet no creditor dare seize them after the proceedings are instituted for the winding up of the estates involved in such administrations.

Can there be a practical administration of the Attachment Act by the Supreme Court of New Jersey and a Circuit Court at the same time? It is contended that there cannot, and that any writ issued out of any county court that makes it impossible for the plaintiff or the auditor in the Supreme Court suit to perform all the duties and functions outlined in the act, should be quashed.

By Section 18 of the act, plaintiff may discontinue the suit if there are no applying creditors, and if there are such, then with their consent in writing, or upon satisfaction of their claims.

This section seems not to have received the construction of the Courts, but the older authorities, such as *Cummins v. Blair, supra*, hold that after the services of the writ, there can be no discontinuance by the plaintiff against the objections of creditors, who may thereafter apply,

prior to final judgment, for the benefit of the attachment.

Then again, the defendant may put the plaintiff and applying creditors to proof of their claims before a Court and jury, and convert a proceeding in *rem* into a proceeding in *personam*, by entering an appearance. Such appearance he may be perfectly willing to enter, and may desire to enter. If he does so, he may have to appear in many courts and resort to a court of equity to protect himself against such a multiplicity of suits.

There are innumerable situations that could be mentioned to illustrate the impracticability of having several attachment suits pending in the upper courts at the same time. The cases above cited (*Duffin v. Wolf and Noble*, *Brown v. Bissett*, *Brundred ads. Del Hoyo*, *Cummins v. Blair*, *Harris v. Linnard* and *Jennings*) all seem to agree that the second suit should not proceed beyond the issuance of a writ until the first suit is disposed of. The reason for such holding is that the first writ may be vacated or set aside, or the proceedings abandoned, and that creditors, becoming such after the issuance in the first writ, are entitled to protection. In *Brown v. Bissett*, *supra*, the Court, in its opinion, declared that it would "appoint auditors in the first (suit) only, because such appointment effects all that the law requires".

Section 7 of the Attachment Act (Comp. St., p. 137) provides that the writ shall bind the attached rights and credits, etc. from the time of executing the same, but it is contended that this provision does not confine the activities of the auditor to the property actually seized under the writ by the Sheriff.

By Section 9 of the act he is to retain personal

property attached in safekeeping, to answer and abide the judgment of the Court.

By Section 10, he may break open any house, chamber, etc., where he shall be informed, or have reason to believe any money, etc., of the defendant may be deposited.

By Section 22, after the return of the writ, and presumably before judgment, the auditor, however,

“for the discovery of property and detection of fraudulent practices, may issue his warrant \* \* \* to bring before him the wife of the defendant, or any other person, and him or her \* \* \* to examine on oath or affirmation \* \* \* touching the trading, dealings, money, debts, effects, rights, credits, lands, tenements, property and estate of the defendant, and his secret or fraudulent grants and transfers of the same, etc.”

By Section 23, the auditor may issue his warrant to the Sheriff or any Constable to break any house, etc., and seize and inventory property of the defendant found therein.

By Section 24, he may sue any person indebted to the defendant.

From these sections it would seem that regardless of whether a levy has been made under a writ, the auditor, after his appointment, may seize any personal property that he is able to discover, and apply it to the satisfaction of the claims of the plaintiff and applying creditor. (*Tomlinson v. Stiles*, 28 N. J. L. 201.). The writ and a levy becomes effective and binds the personal property seized, from the time the levy is made as against the owner, purchasers and mortgagees, but if the auditor discovers and seizes personal property before its alienation by the defendant, such prop-

erty may be distributed in the course of the attachment proceedings.

The Altschuler writ should be quashed for still another reason. The affidavit upon which the writ issued is entitled as follows:

"BERGEN COUNTY CIRCUIT COURT.	
ROBERT A. ALTSCHULER	}
v.	
CHARLES W. OWEN.	
	In Attachment AFFIDAVIT."

The affidavit is entitled in a cause not then pending, and is void and of no effect under the decisions:

*Potter v. Cook*, 30 N. J. L. J. 206;  
*Kein v. Katz*, 92 N. J. L. 406;  
*Ferenga v. Mowkowitz*, 1 N. J. Misc.  
 170;  
*Vitalano v. Roffa*, 3 N. J. Misc. 1131;  
*Sturwald v. Furman*, 4 N. J. Misc. 472.

The law enunciated by the above decisions has its foundation in reason, which does not appear to the casual reader.

The plaintiff's affidavit is taken by his attorney. If it be ruled that a case is pending with the making or filing of the affidavit, the impropriety of the attorney's act is or may be sufficient to vitiate the affidavit. (*In re Ungaro's Will*, 88 N. J. Eq. 25; *Den v. Geiger*, 9 N. J. L. 225; *State v. Bergen*, 24 N. J. L. 548.) (Case, p. 3.)

(b) Assuming that the Altschuler writ is properly issued, the levy thereunder should either be quashed as to the property in question, or postponed to the lien of the Keppler writ. The

Kepler writ was issued August 3, 1926. It was directed and delivered to the Sheriff of the County of Bergen. Its mandate was to attach the rights and credits, etc., of the defendant in an action at law wherein the plaintiffs demand Fifty-eight thousand eight hundred forty Dollars and eighty-eight (\$58,840.88) Cents. It was the duty of the Sheriff of Bergen County to obey this mandate before he undertook to conform to the mandate of a junior writ against the same defendant. He failed in the performance of this duty. Can the plaintiff in the Altschuler writ take advantage of this dereliction of the Sheriff? It is respectfully contended that the action of the Sheriff of the County of Bergen in seizing the stock in question under a junior writ, before the return day of the senior writ, constitutes what is known in law as an abuse of the process of the Circuit Court of Bergen County, which abuse that Court should and will remedy.

“It has been held, however, that as it is the duty of an officer in whose hands several writs are placed, to levy them in the order in which he receives them, his disregard of his duty in this respect will not be permitted to deprive the creditor whose writ was first delivered, of the priority which a proper performance of the officer’s duty would have given him” (Corpus Juris, Vol. 6, p. 302, Sec. 561).

“In those states where the lien of an execution is dependent on its levy, the officer must always be careful to levy the writs in the order in which they have been placed in his hands, unless his duty in this respect is changed by directions of the parties having control of the writs. This rule has been so inflexibly applied as to take away from the holder of the junior writ all incentive to diligence in discovering property

subject to execution, for notwithstanding the discovery by the plaintiff in a junior writ of property before unknown to the Sheriff, it has been held that he cannot reward this superior diligence, but must first levy on the writ first received" (Freeman on Executions [second edition] Section 251).

The right of the Circuit Court to remedy this situation on the application of respondents is unquestionable.

*National Papeterie Co. v. Kinzey*, 54 N. J. L. 29;

*Clapp v. Ely*, 27 N. J. L. 55;

*Limpert Bros. v. French & Son*, 90 N. J. L. 601, and cases above cited.

The Sheriff is not in a position to discriminate between creditors, any more than were the defendants in the cases above cited, and it should not be left to him to decide whether he will proceed under a junior writ rather than under the senior writ, because the plaintiff in the junior suit has brought property to his attention. It is of no consequence how and from whom the Sheriff received information as to the property and estate of the defendant. If received before the return day of a writ, it is his duty instantly to conform to the mandate of the writ and seize such property.

That the Sheriff of his own volition sent the Keppler writ back to the Clerk of the Supreme Court before its return day does not affect his right to seize under the writ.

It has been held that an order obtained by the auditor to sell attached real estate has the effect of an execution, and that when such auditor

"in making a sale of the defendant's prop-

erty under an order of the court is guilty of what amounts in law to an abuse of the order, the Circuit Court has the same power to set aside such sale as it would have if the sale had been made by virtue of an execution issued on a judgment entered in a common law action" (*Jackson v. Halstead*, 82 N. J. L. 306, 307).

In this case the Court says:

"Where the parties in interest are all before the court whose process has been irregularly used, or abused, and full justice can be done by the methods and practice of such court, it would be admitting a fatal weakness in the constitution of such court to concede that it is powerless to do what indisputable justice may demand to be done."

It has long been the law that the Sheriff is obliged to seize the property of the defendant under a senior execution first, notwithstanding the receipt of information from the plaintiff in a junior execution as to property available for the satisfaction of the second writ. This rule is now controlled by statute (Comp. St., p. 2247, Sec. 18).

With respect to the priorities of writs of attachment issued out of the upper courts, there are no cases in New Jersey that the subscriber is able to find.

In *Bates v. Bochman*, 2 N. J. L. J. 155, Justice Depue says:

"That although if the sheriff, while two writs (executions) are in his hands, and before either is returnable, receives notice of the existence of any property, he must levy on it and credit it to the earlier writ, although the property may have been found

by the diligence of the attorney of the second writ, yet after the first has expired, a levy made must accrue entirely to the benefit of the subsequent writ."

The attachment acts in some of the States provide for the priority of successive writs, and as has been said above, little help is to be had from the decisions of foreign States.

"Where several writs of attachment are placed in the hands of a sheriff, they are entitled to priority in the order in which they are received, and this priority is not affected by the order in which the officer serves the writs; nor does the fact that he levies the writs on different items of property restrict the right of the holder of the senior writ to the property actually levied on under it, but under such circumstances the Court may require the officer's return to be corrected and may give the benefit to the creditor whose order of attachment was first delivered to the sheriff."

2 R. C. L., p. 800, Sec. 1.

"Where subsequent attachments have been first levied by the sheriff or his deputies, and the fund attached is under the control of the Court, and the parties are all before the Court, the chancellor should distribute the fund among the attaching creditors in the order in which the attachments came into the sheriff's office."

2 R. C. L., p. 866, Sec. 78.

"Where several writs against the same defendant are placed in an officer's hands, it is his duty to serve or levy them in the order in which they were delivered to him for that purpose, and in the absence of any showing to the contrary, it will be presumed that the sheriff levied first those

attachments which came into his hands first."

C. J., vol. 6, p. 218, Sec. 413.

"As an attachment usually becomes a lien only from the time when a levy is made thereunder, and the general rule is that the priority between different writs of attachment is fixed according to the relative time when the respective levies were made thereunder \* \* \*. It has been held, however, that as it is the duty of an officer in whose hands several writs are placed, to levy them in the order in which he received them, his disregard of his duty in this respect will not be permitted to deprive the creditor whose writ was first delivered of the priority which a proper performance of the officer's duty would have given him."

C. J., vol. 6, p. 302, Sec. 561.

"Where two or more writs against the same defendant are placed in the hands of the sheriff, it is his duty to execute them in the order in which he received them."

35 Cyc. 1535.

"Where an officer receives a writ without any special directions, he is bound to execute it according to its precept, if he can find property by reasonable diligence."

35 Cyc. 1537.

It was held in *Guaranty Trust Company v. Nebeker*, 68 N. J. L. 561, 564, that the rights of the parties cannot be affected by the lack of diligence on the part of the sheriff, who is an officer of the court.

The tax warrant has been likened to an execution, and priority given it in accordance with the time of its delivery to an officer for execution.

*Evans v. Walsh*, 41 N. J. L. 281.

There seems to be no case in New Jersey directly passing upon the point in question, nor is there any express statutory regulation of priorities with respect to writs of attachment, but their similarity to writs of execution permit of an analogy, which in reason and principle should and does deny the junior writ in this case any priority that it claims to have acquired over the senior writ of the respondents.

***The Altschuler Suit Was Properly Restrained  
and the Order Appointing Auditor  
Therein Properly Vacated.***

The cases above cited (*Duffin v. Wolfs and Noble*, *Brown v. Bissett*, *Brundred ads. Del Hoyo*, *Cummins v. Blair*, and *Harris v. Linnard & Jennings*) are authority for the proposition that during the pendency of the first attachment suit, no auditor will be appointed in a second proceeding, because the first suit and the appointment of an auditor therein effects all that the law requires. If such an order were improvidently made, it may with propriety be vacated, and the suit restrained pending the final disposition of the prior suit. After the return of the writ the next proceeding is to advertise the issuance of the writ and secure the appointment of an auditor. The prosecutor of the Altschuler writ having advertised, and no appearance having been entered by the defendant at the time of the making of the order under review, the next step would have been for the auditor to adjust the claims of the plaintiff and applying creditors, which would be followed by the entry of judgment on the auditor's report. If the appointment of the auditor was properly vacated, the attaching creditor suffers no

harm by the imposition of a restraint upon his suit "until (the restraining court) shall otherwise order" (Case, p. 24). Assuming that more than one writ may issue, all of the cases last above cited seem to indicate that if the first suit be not prosecuted with diligence and in good faith, it may be the Court will appoint an auditor and permit the second suit to proceed, and permit the administration of the defendant's estate in such second suit, but that question does not arise in the case now before the Court, because the respondents have proceeded expeditiously with the first suit.

***Woodward v. Lishman Does Not Control the Disposition of the Question of Priorities.***

Prosecutors rely upon the case of *Woodward v. Lishman*, 80 N. J. L. 586, decided by the Supreme Court in 1911. The case did not involve a determination of the questions now presented. Writs of attachment were issued out of the small cause court, and property of the defendant seized thereunder. Later a writ was issued out of the Circuit Court and the sheriff thereunder seized and took into his possession the same property. An auditor was appointed in the Circuit Court suit and he sold the attached property and reported that there were no applying creditors. Plaintiffs in the small cause court presented their petitions to the Circuit Court asking to be paid out of the proceeds of sale of the attached property.

In reading this case it should be kept in mind that the Attachment Act of 1901 contains provisions governing the prosecution of attachment suits before justices of the peace, who hold the

small cause courts (Comp. St., p. 148). Like provisions for the use of the writ of attachment are contained in the District Court Act (Comp. St., p. 1980). The old Attachment Act of 1874 provided that writs out of the Supreme, Circuit or Common Pleas Courts should supersede writs issued out of the justices' courts. This provision, however, for supersedeas was apparently by inadvertence omitted from the Act of 1901, for the District Court Act (Comp. St., 1980, Sec. 77), expressly provides for such supersedeas over writs issued out of the District Court. (Here again may be found an argument against the pendency or prosecution of more than one attachment proceeding against the same defendant at the same time.) Neither the District Court Act nor the Attachment Act of 1901 provides any priorities with respect to writs issued out of the District Court in one case, or out of the small cause court in the other. Therefore, it was but reasonable for the Supreme Court to find that the first writ issued and executed was entitled to priority, as is the case with attachments issued out of the District Court, where the writ of the superior court operates as a supersedeas. The rights of creditors, however, who seized under a prior writ are recognized as superior to the rights of the creditors under the junior writ issued out of the superior court. In the case under discussion, the Supreme Court well found that there is no provision in the Attachment Act of 1901 in so far as it relates to proceedings in the small cause court, for the prorata distribution of property seized under writs of attachment. There is likewise no such provision in the District Court Act. There is, however, a mandatory provision in the Attachment Act of 1901 for the

appointment of an auditor who is to convert attached property into money and

“pay the debt of the plaintiff; and distribute the residue of moneys if any, equally, in proportion to the debt due to each, among the other creditors whose debts shall have been by the final judgment allowed” (Comp. St., p. 145, Sec. 27).

Under the Old Act of 1874, this distribution was prorata with respect to all creditors, but in the Act of 1901 is modified to give the attaching creditor priority in payment, as above stated.

Now there is no machinery in the Justice Court practice nor in the District Court practice for the appointment of an auditor, nor for admitting applying creditors, nor for the determination of priorities, except in so far as provision is made for the payment of prior writs issued out of the District Court, where the suit in the upper court operates as a supersedeas.

In short, the Supreme Court, in *Woodward v. Lishman*, was called upon to decide whether a subsequent writ of attachment issued out of the Circuit Court should have priority over an earlier writ issued out of the small cause court, with respect to property first seized under the latter writ. Manifestly, there would be no justice in the denial of priority to the earlier writ:

The ultimate finding of the Supreme Court in this case appears at page 589, where it is said:

“The Act of 1901 not providing for a prorata distribution among attaching creditors, being silent as to the priority of writs of attachment, and containing no provision for a supersedeas of small cause court writs, we are of opinion that such writs issued

out of the small cause courts, if first executed, according to law, are liens upon the attached property prior to the lien of an attachment subsequently issued out of the Circuit Court."

It will be noticed that the opinion of the Court contains no reference to that part of the Attachment Act of 1901, which provides for the priority of the plaintiff's claim in suits begun in the upper courts, and the prorata distribution of the balance in the hands of the auditor, and the statement in the opinion to the effect that there is no provision for the pro rata distribution among attaching creditors must relate to distribution among creditors taking advantage of the procedure in the small cause court, and the distribution as between such creditors and those causing writs to be issued out of the upper courts.

It is true that there is no provision for equal distribution among attaching creditors (those holding writs) because the Act does not contemplate more than one attachment out of the upper courts, for reasons above pointed out. With respect to those holding such writs, there is no reason for such a provision, which must necessarily conflict with the obvious machinery of the Act, and with the special provision therein contained for the prorata distribution of the moneys in the hands of the auditor among all applying creditors, after satisfaction of the plaintiff's claim is had.

It is a principle of law long established, that the diligent creditor is preferred, and it should control in the present case. The rights of the defendant, bona fide purchasers and mortgagees are not involved. The contest is between two creditors. The diligence to which the cases refer is that of adopting the process of the courts promptly, and in advance of other creditors. This

the respondents have done. The source of the sheriff's information concerning property of the defendant that might be attached is of no consequence. The mandate of the writ was clear, and when knowledge of other property of the defendant came to his attention, it was the sheriff's duty to seize it for the benefit and satisfaction of the senior writ, and his failure so to do ought not to place the junior writ in a better position than if the sheriff had done what in law and justice he should have done.

### CONCLUSION.

*For the reasons above stated, it is respectfully contended that the judgment of the Supreme Court should be affirmed.*

SIDNEY W. ELDRIDGE,  
*Of Counsel with Respondents*  
*Keppler & Co.*  
*and Clarence Mabie.*

The following is a list of the names of the persons who have been appointed to the various offices of the Board of Directors of the National Bank of Commerce, New York, for the term ending on the 31st day of December, 1891. The names are given in alphabetical order of their surnames.

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