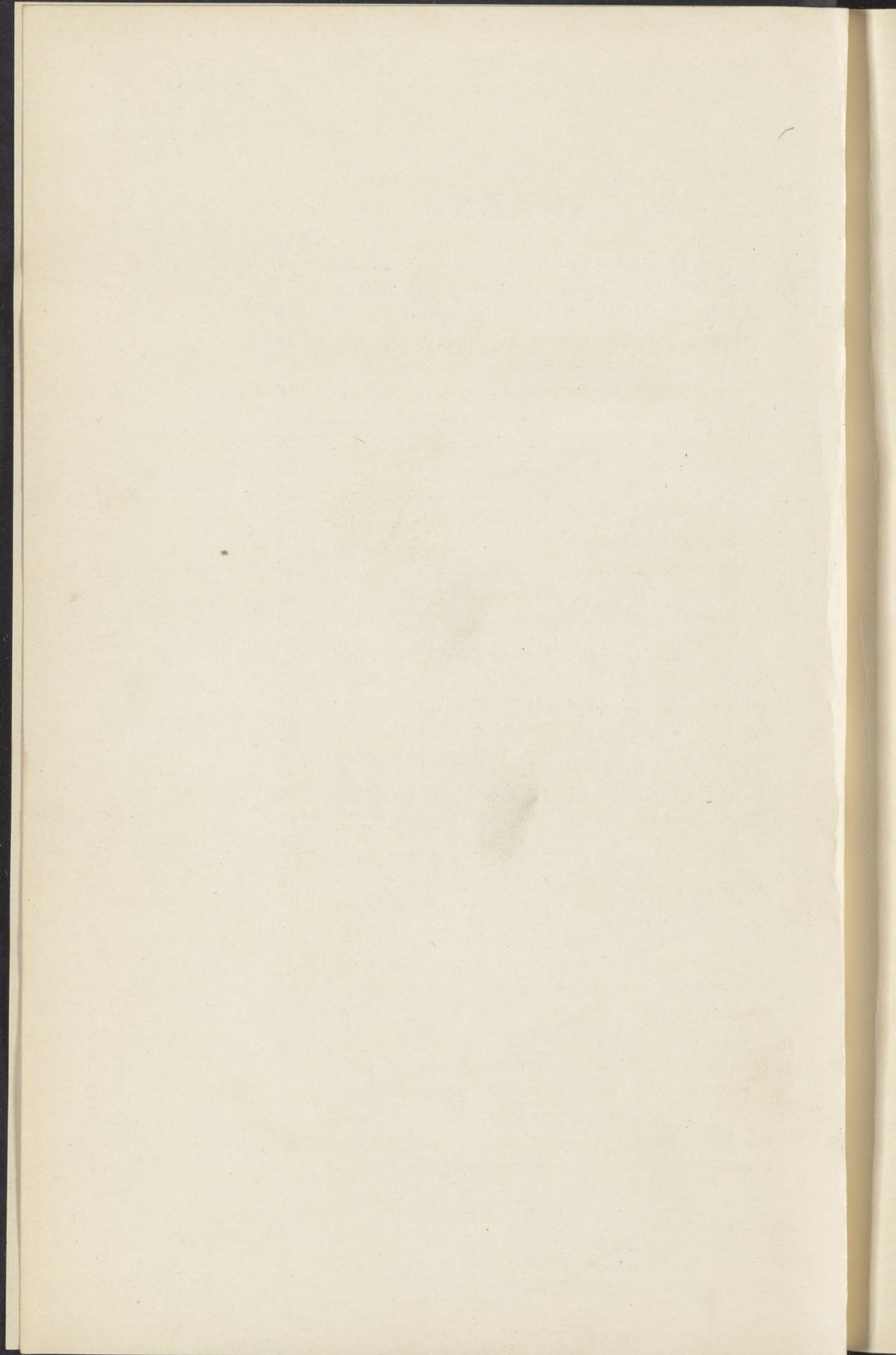


INDEX

	PAGE
Order to Show Cause	1
Petition for Leave to Sell Real Estate Free and Clear of Encumbrances	3
Order to Show Cause	14
Order to Sell Real Estate Free and Clear of Encumbrances	16
Order to Add Party Defendant	21, 24
Receiver's Final Report and Account	26
Schedule A.	34
Schedule B.	34
Schedule C.	35
Schedule D	35
Schedule E.	36
Schedule F.	37
Schedule G.	38
Schedule H.	39
Schedule I.	40
Schedule J.	41
Schedule K.	41
Order to Show Cause	42
Order Approving Receiver's Final Account and Report and Discharging Receiver	45
Statement of Distribution by Receiver	49
Opinion of Vice-Chancellor	51
Notice of Appeal	55
Petition of Appeal	57
Answer to Petition of Appeal	60



Order to Show Cause.

Order to Show Cause.

Filed February 20, 1928.

In Chancery of New Jersey

Between

FRANKLIN LUMBER COMPANY,
Complainant,

and

HAROLD ANDERSON, INC.,
a corporation,

Defendant.

*On Bill,
&c.*

*Order to
Show Cause.*

10

This matter being opened to the Court by Koehler & Augenblick, solicitors for and of counsel with the complainant, and it appearing upon reading the bill of complaint and the affidavit thereto annexed, that the defendant corporation Harold Anderson, Inc., has become insolvent and is not able to resume its business in a short time with safety to the public and advantage to its stockholders and creditors and good cause appearing for the making of this order,

20

It is, on this 20th day of February, 1928, on motion as aforesaid, ORDERED that C. Wallace Vail be and he hereby is appointed custodial receiver of Harold Anderson, Inc., with all the powers incident thereto,

30

It is further ORDERED that the said Receiver before he shall enter upon his duties as such Receiver shall take the oath prescribed by law and give a bond to the Chancellor of the State of New Jersey in the sum of \$2,000 dollars conditioned for the faithful performance of his

40

Order to Show Cause.

duties to be approved as to the form and sufficiency thereof by Louis Auerbacher, Jr., one of the special masters of this court.

10 And it is further ORDERED that the said defendant corporation, its officers, agent, and all persons claiming under it, shall be, and they hereby are, restrained from interfering with said receivers taking possession of and managing said property, and that all persons whosoever, and especially the creditors of the said defendant corporation, shall be, and they hereby are, restrained from bringing any action or proceeding at law or otherwise against the said corporation and from taking any further proceedings in any action or proceeding heretofore commenced.

20 And it is further ORDERED that the defendant company and the creditors and stockholders thereof show cause before this court on the 28th day of February, 1928, at ten o'clock in the forenoon of that day or as soon thereafter as the matter can be heard at the Chancery Chambers, Industrial Office Building, Newark, N. J., why a Receiver should not be appointed pursuant to the statute in such case made and provided, and that a notice of this rule to show cause and application be mailed to all
30 creditors and stockholders of the defendant company whose names and addresses can be ascertained at their last known post office address at least three days before the return day of this order, and that a copy of this order to show cause as well as of the bill and affidavit on which the same is based be served upon the defendant company within three days from the date hereof.

E. R. WALKER,

C.

40 Respectfully advised,
ALONZO CHURCH,
V.-C.

Petition for Leave to Sell Real Estate, etc.

**Petition for Leave to Sell Real Estate Free and
Clear of Encumbrances.**

Filed April 24, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="text-align: center;">FRANKLIN LUMBER COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HAROLD ANDERSON, INC., <i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i> 10</p> <p><i>Petition for Leave to Sell Real Estate Free and Clear of Encum- brances.</i></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	--------------------------------------------------------------------------------------------------------------------------------------------------

The petition of C. Wallace Vail, Receiver of Harold Anderson, Inc., the above-named defendant corporation, respectfully shows, 20

By an order of this court made in the above-entitled cause on the 20th day of February, 1928, your petitioner was appointed Custodial Receiver of the above-named company and the defendant company and the creditors and stockholders thereof were thereby ordered to show cause before this court on February 28, 1928 why a Receiver should not be appointed pursuant to the statute in such case made and provided; and then on February 28, 1928, the said matter coming on to be heard before this court, an order was made and entered in this cause adjudging the defendant company to be insolvent and your petitioner was continued as Receiver of said defendant corporation with all the powers incident thereto and especially those conferred upon him by the order dated February 20, 1928, and especially by the act entitled "An Act concerning Corporations (Revision of 1896)" and the several acts supplementary thereto and amendatory thereof. By said 40

Petition for Leave to Sell Real Estate, etc.

order your petitioner was directed to take the oath prescribed by law and to give a bond to the Chancellor of the State of New Jersey in the sum of two thousand dollars conditioned for the faithful performance of his duties. Your petitioner did qualify as such Receiver by taking said oath and by entering into said bond with the Chancellor of the State of New Jersey, and your Petitioner is now acting as the Receiver of the above-named defendant corporation.

Both the order appointing your petitioner Custodial Receiver hereinbefore referred to and the order continuing your petitioner as Statutory Receiver hereinbefore referred to by their terms did restrain and enjoin all persons whosoever and especially the creditors of the defendant corporation from bringing any action or proceedings at law or otherwise against the said corporation and from taking any further proceedings in any action or proceeding theretofore commenced.

Your petitioner as Receiver of the above-named defendant corporation is now in possession among other things of two certain tracts of land and premises as follows:

The first of said tracts is an uncompleted one-family dwelling house located at 17 The Fairway in the Town of Montclair in the County of Essex and State of New Jersey, said building is partially completed but it is still necessary in order to complete the said building to perform a large amount of work and the said building is rapidly deteriorating in value. The said building is erected upon a lot of land in said town bounded and described as follows:

BEGINNING at a point in the easterly line of the Fairway distant six hundred thirty feet measured northerly along same from its intersec-

Petition for Leave to Sell Real Estate, etc.

tion with the northerly line of Bellevue Avenue; thence still along the easterly line of the Fairway North nineteen degrees eleven minutes East seventy-five feet; thence South seventy degrees forty-nine minutes East one hundred fourteen feet and eighty hundredths of a foot; thence South nineteen degrees thirty-seven minutes West seventy-five feet and one one-hundredth of a foot; thence North seventy degrees forty-nine minutes West one hundred fourteen feet and twenty-two hundredths of a foot to the easterly line of the Fairway at point or place of BEGINNING. Being a description of lot 28 on map of Greenview Terrace prepared by Miller & MacGiffert, C. E. of Montclair, N. J., June, 1926.

10

The second of said buildings is known as 15 The Fairway, in the said Town of Montclair, County of Essex and State of New Jersey, and is an uncompleted one-family dwelling house; to complete the building would require the expenditure of a large sum of money and the said building is rapidly deteriorating and will continue to deteriorate rapidly in value. The said building is erected upon a lot of land in said Town of Montclair bounded and described as follows: to wit:

20

BEGINNING at a point in the Easterly line of the Fairway distant five hundred fifty-five feet measured northerly along same from its intersection with northerly line of Bellevue Avenue; thence still along easterly line of The Fairway North nineteen degrees eleven minutes East seventy-five feet; thence South seventeen degrees forty-nine minutes East one hundred fourteen feet and twenty-two hundredths of a foot; thence South nineteen degrees thirty-seven West seven-

30

40

Petition for Leave to Sell Real Estate, etc.

ty-five feet; thence North seventy degrees forty-nine minutes West one hundred thirteen feet and sixty-four hundredths of a foot to Easterly line of The Fairway to point and place of BEGINNING. Being a description of lot 27 on map of Greenview Terrace.

10 The tract of land first above described is encumbered by the following mortgages:

(a) A mortgage made by the defendant corporation to Essex Title Guaranty & Trust Company, a corporation, dated May 27, 1927, recorded in Book N-61 page 90 in the Essex County Register's Office to secure the sum of \$13,500 said mortgage having been assigned by said Essex Title Guaranty & Trust Company to Montclair Trust Company, a corporation, by assignment dated February 2, 1928 recorded February 8, 1928 in said Register's Office in Book 197 of Assignments of Mortgages page 42 and the said Montclair Trust Company is now the holder of said mortgage.

20 (b) A mortgage made by the defendant corporation to Boon Bros., Inc., dated May 27, 1927 in said Register's Office in Book N-61 of Mortgages page 85 to secure the sum of \$3,750; said mortgage having been assigned by said Boon Bros., Inc., to Lizzie Boon by assignment dated August 15, 1927 recorded August 23, 1927 in Book 192 of Assignments of Mortgages in said Register's Office on page 267 and the said Lizzie Boon is now the holder of said mortgage.

30 (c) A mortgage made by the defendant company to Joseph M. Sullivan which said mortgage is dated July 18, 1927 recorded June 22, 1927 in Book D 62, page 14 in said Register's Office to secure the sum of \$5,383 which said mortgage is a lien against the property first above

40

Petition for Leave to Sell Real Estate, etc.

described as well as against the property second above described, said mortgage being given to secure a series of notes or renewals thereof, said notes being given to evidence the cost of certain building materials furnished or to be furnished by the mortgagee to the mortgagor and to be used by the mortgagor in construction work. 10

(d) A mortgage made by defendant company to George H. Stanton to secure the sum of \$4,-668.45 which mortgage is dated October 5, 1927 and recorded October 6, 1927 in the said Register's Office in Book Q 62 of Mortgages page 102; this mortgage being a lien not only upon the property first above described but upon the property second above described as well.

(e) On February 9, 1928 the said Montclair Trust Company filed a *lis pendens* in the office of said Register which was recorded therein in Book K of *lis pendens* page 223 giving notice of the pendency of a suit to foreclose the mortgage before referred to recorded in Book N 61, page 90. 20

The second of said tracts is encumbered by the following mortgages:

1. A mortgage made by the defendant corporation to Essex Title Guaranty & Trust Company on June 22, 1927 recorded June 27, 1927 in said Register's Office in Book G 61, page 493 to secure the sum of \$12,500. 30

2. A mortgage made by the defendant company to Lizzie Boon June 22, 1927 recorded June 27, 1927 in Book Z 60 of Mortgages, page 457 to secure the sum of \$3,750 said mortgage reciting and is subordinate in lien to the lien of the mortgage hereinbefore referred to held by Essex Title Guaranty & Trust Company. 40

Petition for Leave to Sell Real Estate, etc.

3. The mortgage hereinbefore referred to in the sum of \$5,383 made by the defendant company to Joseph M. Sullivan recorded in Book D 62, page 14.

10 4. The mortgage hereinbefore referred to made by the defendant company to George H. Stanton to secure the sum of \$4,668.45 recorded in Book Q 62, page 102.

5. On January 27, 1928 said Essex Title Guaranty & Trust Company filed a *lis pendens* in said Register's Office which was recorded therein in Book K of *Lis Pendens* page 206, giving notice of the pendency of a suit to foreclose its mortgage above referred to which was recorded in Book G 61 page 493.

20 Both of said tracts of land are encumbered by certain restrictions as well as by certain easement to maintain poles on said lands.

The said lands and premises are likewise encumbered by the following judgments:

30 First: The judgment obtained by Franklin Lumber Company against Harold Anderson, Inc., and Harold Anderson in the Second District Court of the City of Newark, which said judgment was entered in said court November 22, 1927 for the sum of \$368.06 damages and \$22.96 cents costs making a total of \$391.02 which said judgment was docketed in the Essex County Court of Common Pleas and recorded in Book 28 of Docketed Judgments page 151 on November 30, 1927.

40 Second: A judgment obtained by the Franklin Lumber Company against Harold Anderson and Harold Anderson, Inc., on the 22nd of November, 1927 in the Second District Court, for \$311.42 damages and \$20.13 costs, making a total

Petition for Leave to Sell Real Estate, etc.

of \$331.55 which said judgment was docketed on November 30, 1927 in the Essex County Court of Common Pleas in Book 28 of Docketed Judgments page 152.

Third: A judgment obtained by Hjamler Pirson against Harold Anderson, Inc., in the Montclair District Court on February 3, 1928, for \$200 damages and \$13.76 costs, making a total of \$213.76 which said judgment was docketed in the Essex County Court of Common Pleas on February 21, 1928 in Book 28 of Docketed Judgments page 375. 10

Fourth: A judgment obtained by Charles R. Speni and Anthony Maffucci against Harold Anderson, Inc., and Harold Anderson, in the Essex County Circuit Court on March 1, 1928 for \$1,003 damages and \$68.77 costs, making a total of \$1,071.77 which said judgment was recorded in Book 104 page 212. 20

Fifth: Judgment obtained by Rutgers Builders Supply Co., a New Jersey Corporation, against Harold Anderson, Inc., owner and builder, which said judgment was entered on a mechanic's lien on March 2, 1928 for the total sum of \$1,278.51 and recorded in Book 104 page 213, said judgment being generally against Harold Anderson, Inc., and specially to be made of certain lands and premises in the Town of Montclair. 30

On November 30, 1927, E. T. Burrowes Co., filed a mechanics' lien claim in the Essex County Clerk's Office which was recorded in Book 21 of Mechanics' Liens page 383, claiming a lien upon the buildings and lands first above described for the sum of \$201 for labor performed and materials furnished in the erection and construction of said building. 40

Petition for Leave to Sell Real Estate, etc.

10 On December 29, 1927 Jacob Skoland filed a mechanics' lien claim in the said Clerk's Office which was recorded in Book 22 of Mechanics' Liens page 9 claiming a lien upon the land and building first above described in the sum of \$132.82 and against the lands and buildings second above described in the sum of \$188.12 for labor performed in the erection of said buildings, and the said Skoland did institute said suit against Harold Anderson, Inc., as builder and owner and did join as parties to said action, the Essex Title Guaranty & Trust Company, and the said Lizzie Boon and the said Joseph M. Sullivan and the said George H. Stanton, alleging that his said lien was prior and paramount to the lien of said respective mortgages.

20 On December 29, 1927 Olaf Gabrielson did file a mechanics' lien claim in said Clerk's office which was recorded in Book 22 of Mechanics' Liens page 11, the said Gabrielson claiming the sum of \$100.82 as a lien against the building and lands first above described and the sum of \$193.47 as a lien against the building and lands second above described for work done in the erection and construction of said buildings, and the said Gabrielson did institute a suit on said lien claim joining the said Essex Title Guaranty and Trust Company, the said Lizzie Boon, the said Joseph M. Sullivan, the said George H. Stanton, E. T. Burrowes Co., and Franklin Lumber Company, and claiming that his said lien is prior and paramount to the liens and encumbrances of the said parties so joined by him in his said suit and lien claim as aforesaid.

30 On January 7, 1928 Thomas Thompson filed a mechanics' lien claim in said Clerk's office which was therein recorded in Book 22 of Mechanics' 40

Petition for Leave to Sell Real Estate, etc.

Lien page 34, the said Thompson claiming a lien upon the lands and buildings first above described for the sum of \$252.17 and against the building and lands second above described for the sum of \$166.47 for work done in the erection and construction of said buildings and the said Thompson did institute suit upon said lien claim and did join in said lien claim and in said suit the said Essex Title Guaranty & Trust Company and the said Lizzie Boon and the said Joseph M. Sullivan and the said George H. Stanton and the said Franklin Lumber Company and the said E. T. Burrowes Co., claiming that his lien claim was prior and paramount to the lien claims of the said persons so joined by him as aforesaid. 10

On January 10, 1928, Rudgers Builders Supply Co., did file a mechanics' lien claim in the said Clerk's office which was therein recorded in Book 22 of Mechanics' Liens page 43 claiming the sum of \$1,162.50 for work done in the erection and construction of the building upon the lands second above described and claiming a lien upon said land and building and the said claimant did join the said Joseph M. Sullivan and George H. Stanton as parties defendant to said lien claim action and said lien claim alleging that his lien claim was prior and paramount to the liens of said parties so joined. 20 30

On March 8, 1928, Clark & Co., a corporation filed a lien claim in said Clerk's office claiming a lien upon the building and lands second above described in the sum of \$103.50 for work done in the erection and construction of the building second above described and claiming a lien upon the building and land second above described. 40

Petition for Leave to Sell Real Estate, etc.

Your petitioner is advised and verily believes and so charges the fact to be that the sum appearing to be due upon the mortgage held by the Essex Title Mortgage Guaranty & Trust Co., is not in fact the true sum due on said mortgage; that said mortgage was given to secure advances to be thereafter made and that the whole of said sum has not been advanced; and that said mortgage is subordinate to the moneys of the several lien claimants hereinbefore referred to; that the mortgage held by the said Lizzie Boon by agreement between the parties was postponed in lien to the mortgage held by the said Essex Title Guaranty & Trust Company and that said mortgage thereby became subordinate to the said lien claims of the several lien claimants above referred to; your petitioner is informed and so charges the fact to be that the mortgage given to the said Sullivan as aforesaid was given as security for the payment of moneys due for materials sold for the erection and construction of said building and that said mortgage is subordinate to the claims of the respective lien claimants as aforesaid; your petitioner shows that the mortgage held by the said Stanton is subordinate to the claim of the several lien claimants as aforesaid; said mortgage having been given as security for the payment of certain sums of money due for commissions in the sale of real estate claimed to have been earned by the said Stanton; your petitioner further charges that there is not due upon the mortgage held by the Montclair Trust Company, the sums of money it purports to secure; that said mortgage was given to secure advances of money to be made from time to time and that all of the moneys so to be advanced under said mortgage have not

Petition for Leave to Sell Real Estate, etc.

been advanced; your petitioner further charges that all of said mortgages were recorded after the commencement of the construction of the said buildings; that disputes have arisen between the various encumbrancers and lienors respecting the validity, extent and priority of the said several liens; that the said property is of a character materially to depreciate pending litigation and that it is necessary that the said property be sold free and clear of all mortgages and liens as aforesaid with the exception of the restrictions of record and easements to maintain poles and wires, and that the proceeds arising from the sale of said property be brought into court there to remain subject to the same liens and equities as was the property before sale and subject to the further order of the Court.

And your petitioner will ever pray, etc.

KOEHLER & AUGENBLICK,
Solicitors of Petitioner.

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

C. WALLACE VAIL, being duly sworn according to law, on his oath says that he is the petitioner named in the foregoing petition; that the matters and things therein contained are true except those matters which are stated to be on information and belief and that as to those matters, he believes them to be true.

C. WALLACE VAIL.

Sworn and subscribed to before me this 24th day of April, 1928.

ETHEL BOTWINICK,
Notary Public of N. J.

Order to Show Cause.

Order to Show Cause.

Filed April 24, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

FRANKLIN LUMBER COMPANY,
Complainant,

and

HAROLD ANDERSON, INC.,
Defendant.

On Bill, &c.

*Order to
Show Cause.*

20 This matter being opened to the Court by
Koehler & Augenblick, solicitors for and of
counsel with the receiver, and upon reading
and filing the duly verified petition of C.
Wallace Vail, receiver of the above-named de-
fendant corporation, and it appearing to the
Court that the defendant company is the owner
of two certain tracts of land situated on the
Fairway in the Town of Montclair, County of
Essex and State of New Jersey, on which are
located uncompleted buildings; and it further
30 appearing from said petition that the said
buildings and lands are encumbered by numerous
liens and mortgages, the legality, priority and
extent of which have been brought into question
and that such property is of such a character
as to seriously deteriorate in value pending
litigation,

40 It is, on this 24th day of April, 1928, ORDERED,
that the creditors and stockholders of the de-
fendant company and all persons having any in-
terest in the said liens or encumbrances or mort-
gages be and they hereby are directed to show

Order to Show Cause.

cause before this court at the Chancery Chambers in the City of Newark on the 8th day of May, 1928, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard why the lands and premises more particularly mentioned and described in the petition hereinbefore referred to should not be sold free and clear of the mortgages and liens mentioned in said petition as well as of all other liens and encumbrances of every character and description except restrictions of record and certain easements to maintain poles, 10

And it is further ORDERED, that a true copy of this order which need not be certified, be served upon each of the mortgagees and lien holders and creditors and stockholders of the defendant company by mailing a copy hereof to them or their respective solicitors within five days from the date hereof with the postage thereon prepaid. 20

E. R. WALKER,
C.

Respectfully advised,
ALONZO CHURCH,
V.-C.

30

40

Order to Sell Real Estate, etc.

**Order to Sell Real Estate Free and Clear of
Encumbrances.**

Filed May 8, 1928.

IN CHANCERY OF NEW JERSEY.

10

Between

FRANKLIN LUMBER COMPANY,
Complainant,

and

HAROLD ANDERSON, INC.,
Defendant.

On Bill, &c.

*Order to Sell
Real Estate
Free and
Clear of En-
cumbrances.*

20

It appearing that on the 24th day of April, 1928, an order was made in this court in the above cause requiring that the creditors and stockholders of the defendant company and all persons having any interest therein do show cause before this court on Tuesday, the 8th day of May, 1928, at Chancery Chambers in the City of Newark, at 10 o'clock in the forenoon why an order should not be made directing the sale of the lands and premises described in a petition heretofore filed by the receiver of the above-named company and hereinafter more particularly described, free and clear of mechanics' lien claims and certain mortgages and judgments referred to in said petition, subject only to restrictions of record and easements to maintain poles and wires, and due proof having been made to the Court that notice of said order to show cause have been duly served upon each and every of said persons in the manner and as required by said order,

30

40

Order to Sell Real Estate, etc.

And this matter now coming on to be heard in the presence of Koehler & Augenblick, of counsel with C. Wallace Vail, receiver of the above-named company and Robert M. Boyd, solicitor for Montclair Trust Company and Essex Title Guaranty & Trust Company,

And the Court having heard the parties and being of the opinion that the said Harold Anderson, Inc., an insolvent corporation, was at the time of the appointment of said receiver and is at this time encumbered with liens, mortgages and judgments the legality of which has been brought in question, and that the property is of a character materially to deteriorate in value pending litigation concerning the priority of said liens, and that this court has authority to order the sale of said property free and clear of said liens and encumbrances hereinafter referred to, and to order that the money representing the purchase price of said property upon such sale should be brought into court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the Court shall direct, and the Court being of the opinion that an order of sale should be made pursuant to the authority aforesaid,

Now on motion of Koehler & Augenblick, of counsel with C. Wallace Vail, receiver aforesaid, it is on this 8th day of May, 1928, ORDERED and ADJUDGED by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, that all and singular the property hereinafter mentioned should be sold by the said C. Wallace Vail, receiver as aforesaid, free and clear of all encumbrances except restrictions of record and certain easements to maintain poles, at public sale to

10

20

30

40

Order to Sell Real Estate, etc.

the highest bidder at such time and at such place and under such conditions as to said receiver shall seem best, subject however, to the directions of this decree to be hereinafter made.

10 And it is further ORDERED and ADJUDGED by the said court that said property so to be sold shall include the lands and premises hereinafter particularly described with the appurtenances thereunto appertaining as well as the building, material and other chattels in and about said premises. The lands and premises herein referred to consist of two parcels of land and are more particularly described as follows, to wit:

20 *First.* All that certain tract or parcel of land and premises in the Town of Montclair, in the County of Essex and State of New Jersey, bounded and described as follows:

30 BEGINNING at a point in the easterly line of the Fairway distant six hundred thirty feet measured northerly along same from its intersection with the northerly line of Bellevue avenue; thence still along the easterly line of the Fairway North nineteen degrees eleven minutes East seventy-five feet; thence South seventy degrees forty-nine minutes East one hundred fourteen feet and eighty hundredths of a foot; thence South nineteen degrees thirty-seven minutes West seventy-five feet and one one-hundredths of a foot; thence North seventy degrees forty-nine minutes West one hundred fourteen feet and twenty-two hundredths of a foot to the easterly line of the Fairway at point or place of BEGINNING. Being a description of lot 28 on map of Greenview Terrace prepared by Miller & MacGiffert, C. E. of Montclair, N. J., June, 1926.

40 *Second.* All that certain tract or parcel of land and premises in the Town of Montclair, in

Order to Sell Real Estate, etc.

the County of Essex and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Easterly line of the Fairway distant five hundred fifty-five feet measured northerly along same from its intersection with northerly line of Bellevue avenue; thence still along easterly line of the Fairway North nineteen degrees eleven minutes East seventy-five feet; thence South seventeen degrees forty-nine minutes East one hundred fourteen feet and twenty-two hundredths of a foot; thence South nineteen degrees thirty-seven West seventy-five feet; thence North seventy degrees forty-nine minutes west one hundred thirteen feet and sixty-four hundredths of a foot to Easterly line of the Fairway to point and place of BEGINNING. Being a description of lot 27 on map of Greenview Terrace.

And it is further ORDERED and ADJUDGED by said court that the receiver and other persons interested may bring on a motion for the confirmation of said sale before this court at the Chancery Chambers in the City of Newark at 10 o'clock in the forenoon of the Tuesday following the holding of said sale provided notice thereof be given in said notice of sale.

And it is further ORDERED and ADJUDGED that the purchase price of the property so sold shall be held by the said receiver subject to the same liens and equities of all parties interested in said property sold as was the said property before sale, to be disposed of as this court shall hereafter direct in accordance with the liens and priorities thereto upon said property, and all persons individually or corporate whatsoever having any right, title or interest in the property hereby ordered to be sold are hereby required to

Order to Sell Real Estate, etc.

apply to this court for such portion of said purchase price to which they or either of them shall think themselves entitled.

E. R. WALKER,
C.

10 Respectfully advised,
 ALONZO CHURCH,
 V.-C.

20

30

40

Order to Add Party Defendant.

Order.

Filed May 8, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANKLIN LUMBER COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., a corporation, <i>Defendant.</i></p>	<p>10</p>
<p>MONTCLAIR TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., LIZ- ZIE BOON, JOSEPH M. SUL- LIVAN, GEORGE H. STANTON, JACOB SKOLAND, OLAF GA- BRIEISEN, THOMAS THOMP- SON, THE E. T. BURROWES Co. and FRANKLIN LUMBER COMPANY, <i>Defendants.</i></p>	<p><i>On Petition, &c.</i></p> <p>20</p> <p><i>Order.</i></p> <p>30</p>

Montclair Trust Company, a corporation of the State of New Jersey, having presented its petition in the above-entitled cause in and by which it is represented that said petitioner holds a mortgage made by Harold Anderson, Inc., to Essex Title Guaranty & Trust Company and assigned to said petitioner bearing date May 27, 1927, to secure the payment of \$13,500 and re-

Order to Add Party Defendant.

10 corded in the office of the Register of Essex
County in Book N-61 on pages 90-91, and that
such defaults have been made in the performance
of the covenants and premises of the mortgagor
as to forfeit the estate granted and conveyed
as security for the payment of said bond and
20 make it proper and advisable to foreclose said
mortgage, and that some or all of the property
so granted and conveyed is in the possession of
C. Wallace Vail a receiver appointed by this
Court, in the above-entitled cause, and in and by
which said petition the petitioner prays for leave
to proceed in this Court with the foreclosure of
said mortgage instituted before the appointment
of said receiver, and it appearing to this Court
from the said petition that leave to proceed to a
20 final decree should be granted,

 It is on this 8th day of May, 1928, on motion
of Robert M. Boyd, Jr., of counsel with the said
petitioner, ordered that C. Wallace Vail as re-
ceiver of Harold Anderson, Inc., be added as a
party defendant hereto; that said defendant have
twenty (20) days from this date within which to
answer the Bill of Complaint and Supplemental
Bill heretofore filed and that the prayer of the
said petition be granted and that said petitioner
30 have leave to proceed with the suit already in-
stituted to foreclose said mortgage to a final
decree therein, only for the purpose of fixing the
amount due on said mortgages in accordance
with the terms and provisions of said Indenture
of mortgage and according to the provisions of
law governing the procedure in said Court of
Chancery and the relief to be administered there-
in; provided, however, that no execution shall

Order to Add Party Defendant.

issue upon such final decree pending further order of this Court herein.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

10

20

30

40

Order to Add Party Defendant.

Order.

Filed May 8, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

FRANKLIN LUMBER COMPANY,
Complainant,

and

HAROLD ANDERSON, INC., a
corporation,

Defendant.

20

ESSEX TITLE GUARANTY &
TRUST COMPANY,
Complainant,

and

HAROLD ANDERSON, INC., HAROLD
ANDERSON, LIZZIE BOON,
JOSEPH M. SULLIVAN, GEORGE
H. STANTON, JACOB SKOLAND,
OLAF GABRIELSEN, THOMAS
THOMPSON, RUDGERS' BUILDERS
SUPPLY COMPANY and FRANK-
LIN LUMBER COMPANY,

30

Defendants.

*On Petition.
Order.*

40 Essex Title Guaranty and Trust Company, a corporation of the State of New Jersey, having heretofore filed its bill to foreclose a mortgage made by Harold Anderson, Inc., to Essex Title Guaranty & Trust Company bearing date June 22, 1927, to secure the payment of \$12,500.00 and recorded in the office of the Register of Essex County in Book G-61 of mortgages on pages

Order to Add Party Defendant.

493-4, and it appearing that thereafter some or all of the property so granted or conveyed is in possession of C. Wallace Vail the receiver appointed by this Court in the above-entitled cause, and the said Essex Title Guaranty and Trust Company being desirous to proceed in this Court with the foreclosure of said mortgage instituted before the appointment of said receiver and upon the below written consent of Messrs. Koehler & Augenblick, solicitors of C. Wallace Vail, receiver:

10

It is on this eighth day of May, 1928, on motion of Robert M. Boyd, Jr., of counsel with said Essex Title Guaranty & Trust Company ordered that C. Wallace Vail as receiver of Harold Anderson, Inc., be added as a party defendant hereto; that said defendant have twenty (20) days from this date within which to answer the Bill of Complaint and Supplemental Bill heretofore filed and that said Essex Title Guaranty & Trust Company have leave to proceed with the suit already instituted to foreclose said mortgage to a final decree therein, only for the purpose of fixing the amounts due on said mortgages in accordance with the terms and provisions of said Indenture of mortgage and according to the provision of law governing the procedure in said Court of Chancery and the relief to be administered therein; provided however, that no execution shall issue upon said final decree pending further order of this Court herein.

20

30

E. R. WALKER,

C.

Respectfully advised,

ALONZO CHURCH,

V.-C.

40

*Receiver's Final Report and Account.***Receiver's Final Report and Account.**

Filed November 5, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*FRANKLIN LUMBER COMPANY,
a corporation,*Complainant,**and*

HAROLD ANDERSON, INC., a corporation,

*Defendant.**On Bill, &c.**Receiver's
Final Report
and Account.*20 To His Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:

I, C. Wallace Vail, do hereby submit this my final account and report as receiver of the above-named defendant, Harold Anderson, Inc.:

1. The total assets of the defendant company, so far as I have been able to discover, consisted of certain real estate as follows:

30 (a) A parcel of land located on Forest street in the Borough of Glen Ridge, in the County of Essex and State of New Jersey, upon which was erected a one-family dwelling house with a garage appurtenant thereto. This property was encumbered by a first mortgage in the principal sum of \$13,300.00 and a second mortgage in the principal sum of \$3,300.00 and a third mortgage which will be hereinafter adverted to in the next succeeding paragraph. This third mortgage, as will hereafter appear, was discharged of record
40 so that the property remained subject to the two

Receiver's Final Report and Account.

mortgages as well as the lien of certain judgments. I attempted to obtain offers for this property and was unsuccessful. A foreclosure suit was instituted by the first mortgage prior to the filing of the bill of complaint in this cause and that suit went by order of this court to final decree, and sale, and the property did not realize sufficient at the foreclosure sale to satisfy the first mortgage so that any equity of redemption which the defendant company might have had was wiped out by the sale under the foreclosure suit. 10

(b) A parcel of land located on the westerly side of Trinity Place, in the Town of Montclair, County of Essex and State of New Jersey, upon which was erected a brick apartment house building. The title to this property was held by one Harry S. Davega under the following circumstances: The defendant company had agreed to purchase the said property subject to a first mortgage of \$90,000 and a second mortgage of \$30,000 and was unable to pay the amount of cash required by the terms of the agreement of sale and purchase at the time of settlement. An arrangement was then made and consummated whereby the defendant company took a deed to said property subject to both of said mortgages and executed a third mortgage to secure the sum of \$26,500; this mortgage being a lien not only against the real estate referred to in this clause, but also to the extent of \$10,000 thereof a lien against the real estate referred to in the last preceding clause of this paragraph and simultaneously therewith the defendant company executed a deed for the said Trinity Place property to one Harry S. Davega and the said Harry S. Davega simultaneously therewith executed a 20 30 40

Receiver's Final Report and Account.

10 declaration of trust by the terms of which he declared that he would reconvey said property to the defendant company or to its nominee when the third mortgage herein referred to had been fully paid and delivered for cancellation or sooner if the holder thereof in writing authorized him so to do, and he further by said declaration agreed to rent the property and keep the same
20 rented and operate the said property and to use the rents, issues and profits to pay all operating charges, fuel, bills, janitor hire, necessary repairs, taxes, interest on prior mortgages, and if any surplus remained, then the surplus was to be paid on account of future installments on various mortgages. Your receiver received an offer from S. Barrett Davega, who was the holder of the
30 said third mortgage, to pay to him the sum of \$1,500 in cash and deliver a discharge of the said \$26,500 mortgage as against the Forest avenue property and your receiver presented said offer to this court for instructions and thereafter this court did make an order directing the receiver to accept the said offer and in compliance with said order your receiver did upon the payment to him of the sum of \$1,500 in cash and the delivery of a release of the Forest avenue property from the lien of said third mortgage, make,
40 execute and deliver to the said S. Barrett Davega, a deed conveying his right, title and interest as such receiver in and to the said property located on Trinity Place in the Town of Montclair aforesaid. The said sum of \$1,500 so received as the proceeds of said property appears upon Schedule A hereto annexed and also upon Schedule C hereto annexed as a separate fund.

(c) A parcel of real estate located on Fairway in the Town of Montclair in the County of

Receiver's Final Report and Account.

Essex aforesaid, and commonly known as No. 17 Fairway, Montclair, upon which was erected a one-family dwelling house which was not entirely completed. This property was encumbered by liens and encumbrances shown on the schedule annexed hereto and marked Schedule F as well as certain taxes and assessments. By an order of this court, your receiver was directed to sell said property at public sale free and clear of the liens and encumbrances shown on said Schedule F, the said liens, if any, to attach to the proceeds. I duly advertised said property for sale in the manner required by the statute in such case made and provided and did on June 8, 1928, sell said property at public auction for the sum of \$17,000 and said sale was confirmed by this court and I did receive the sum of \$17,000 from the purchaser of said property which said sum is now in my hands and appears on Schedule A and also is shown on Schedule D as the fund arising from the sale of the property known as No. 17 Fairway, Montclair.

(d) A parcel of real estate located on Fairway in the Town of Montclair in the County of Essex aforesaid, and commonly known as No. 15 Fairway, Montclair, upon which was erected a one-family dwelling house which was not entirely completed. This property was encumbered by liens and encumbrances shown on the schedule annexed hereto and marked Schedule G as well as certain taxes and assessments. By an order of this court, your receiver was directed to sell said property at public sale free and clear of the liens and encumbrances shown on said Schedule G, the said liens, if any, to attach to the proceeds. I duly advertised said property for sale in the manner required by the statute in such case made

10

20

30

40

Receiver's Final Report and Account.

and provided and did on June 8, 1928, sell said property at public auction for the sum of \$15,000 and said sale was confirmed by this court and I did receive the sum of \$15,000 from the purchaser of said property which said sum is now in my hands and appears on Schedule A and also is
10 shown on Schedule E as the fund arising from the sale of the property known as No. 15 Fairway, Montclair.

2. I have received in all in the administration of this estate, the sums shown on Schedule A attached hereto amounting in the aggregate to the sum of \$33,500; and I distributed in administering the affairs of the defendant company the sums and items shown on Schedule B annexed hereto, amounting in the aggregate to the sum
20 of \$136.19; and I have in my hands as receiver of the defendant company the sum of \$33,363.81.

3. Numerous claims have been filed with me and I have listed said claims in the schedule attached hereto and marked Schedule H of this my report.

4. Of the claims filed with me, I have allowed certain claims as general or common claims in the aggregate total sum of \$26,926.66. I have
30 allowed certain claims as prior preferred claims and certain claims as preferred claims and I have stated that these claims should be paid out of the proceeds of the sale of the Trinity Place property to which I will hereafter advert.

5. Schedule C attached hereto is a schedule showing the proceeds of the sale of the Trinity Place property in the sum of \$1,500. I have disbursed for general disbursements as appears by
40 Schedule J the sum of \$57.04 and I have appor-

Receiver's Final Report and Account.

tioned the disbursements and administration expenses among the several funds in proportion to the amount of money realized from each fund. The Trinity Place fund would therefore carry 4% of said disbursements or \$2.28, leaving a balance for distribution of \$1,497.72. As appears from Schedule C, I have allowed two claims as prior preferred claims to be paid first in the order therein listed out of said fund, the first being a claim of the United States of America for income tax and interest thereon which under the Acts of Congress, is a prior preferred claim in the sum of \$283.38 and the second being claims of the Franklin Lumber Company on two judgments in the sum of \$391.02 and \$331.55 respectively, the Franklin Lumber Company having issued execution on its judgments and made a levy on the real estate of the defendant company, I therefore allowed the sum as a prior preferred claim on the fund realized from the sale of the Trinity Place real estate. I also allowed the three judgment claims listed on said Schedule C as prior claims on the Trinity Place fund to be paid pro rata after paying the aforesaid claims; said judgments total the sum of \$1,575.05 so that the entire Trinity Place fund is thereby disposed of and nothing remains therefrom to pay to general creditors.

6. On Schedule D, I have listed the proceeds of the sale of No. 17 Fairway, property above referred to and have fixed and determined the priority of the first two liens of which the property was sold free of. I did not fix nor determine the priorities as among themselves of the other lienors of whose liens this property was sold free, for the reason that the fund is not sufficient in amount to pay the first two liens.

10

20

30

40

Receiver's Final Report and Account.

7. Schedule E attached to this, my report, shows the proceeds of the sale of the property No. 15 Fairway, above referred to and I have in this instance likewise determined the priorities of the first two liens to which this fund was subject; and the said liens being more than
10 sufficient to exhaust the fund, I have not determined the extent, priority or validity of the remaining liens free of which this property was sold for the reason that it would be useless to do so.

8. Attached hereto is Schedule K which shows the expenses incurred in selling the properties 15 and 17 Fairway, and I have on Schedules D and E, distributed the said expense equally. I have also distributed proportionately in the
20 proportion hereinbefore referred to amongst the 15 and 17 Fairway funds, the general disbursements, that is, to the fund representing 17 Fairway, 51% of the general disbursements, and to the fund representing 15 Fairway, 45% of the general disbursements.

Your receiver therefore prays that his report and account may be ratified, allowed and confirmed, and that the said corporation may be
30 dissolved and that there may be allowed to him for his services as receiver and to his counsel for their services, and to the solicitors of the complainant for their services, such sums of money as the Court shall deem reasonable and just, besides their respective costs in this matter, and after deducting from the moneys in the hands of the receiver, the allowances and costs above mentioned and such costs and allowances as may be made to your receiver, his counsel and the
40 solicitors for the complainant, that an order may

Receiver's Final Report and Account.

be made by this court directing your receiver to pay the claims by him allowed upon the several funds now in his hands in the manner set forth in this his report, so far as the said several funds may extend and that after making such payments, that your receiver may be discharged from his office and all liability thereunder and that his bond may be cancelled. 10

Dated November 2, 1928.

C. WALLACE VAIL,
Receiver.

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

C. WALLACE VAIL, being duly sworn according to law, upon his oath deposes and says that he is the receiver for Harold Anderson, Inc., a corporation; that he has read the foregoing report, knows the contents thereof and says that the matters and things therein contained are true. 20

C. WALLACE VAIL.

Sworn and subscribed to before me this 2nd day of November, 1928. 30

HILDA D. ZIMMER,
An Attorney at Law of New Jersey.

Receiver's Final Report and Account.

SCHEDULE A.

RECEIPTS

1928	
	June 12—Deposit on public sale of Forest Ave. premises, from Jacob Boom..... \$ 6,400.00
	June 29—Deposit, balance on sale price of Forest Avenue from Jacob Boom..... 25,600.00
10	July 30—Deposit, Harry Davega, sale of Davega apartment 500.00
	Aug. 7—Deposit, balance on sale of right, title and interest in Davega property..... 1,000.00
	\$33,500.00
1928	

SCHEDULE B.

DISBURSEMENTS

20	Aug. 17—Louis Auerbacher, Jr., approving bond of Receiver \$ 5.00
	July 30—Fidelity and Deposit Company of Md., Premium on Bond No. 3410487..... 10.00
	June 14—The Montclair Times, Publishing Notice of sale 39.52
	June 14—Newark Evening News, Publishing Notice of sale 30.99
	June 14—Newark Evening News, Publishing Notice of sale 8.64
	June 14—Newark Evening News, Publishing Notice to creditors 14.04
	Oct. 22—Artercraft Sign Co., Sign on 260 Forest Avenue, Glen Ridge, N. J..... 8.50
30	Aug. 8—Registrar of Deeds, Release of Mortgage 2.00
	Sept. 13—Rosella Fishbein, Testimony 17.50
	\$136.19

Receiver's Final Report and Account.

SCHEDULE C.

TRINITY PLACE FUND

Proceeds of Sale of Trinity Place Property.....	\$1,500.00	
Proportionate share of general disbursements (Schedule J), 4% of \$57.04=\$2.28.....	2.28	
	<hr/>	
Balance for Distribution.....	\$1,497.72	10
Prior Preferred Claims—to be first paid thereout in order listed:		
1. United States of America, Income Tax, % John R. Rogers, Collector.....	\$246.42	
Add interest at 1% per month from Au- gust 29, 1927, until paid or.....	36.96	
	<hr/>	
	\$ 283.38	
2. Franklin Lumber Co. Judgment & costs—after levy	391.02	
Franklin Lumber Co. Judgment & costs—after levy	331.55	
	<hr/>	
	\$1,005.95	
Prior Claims on Trinity Place Fund—to be paid thereout pro rata after payment of above claims:		20
1. Hjamler Pirson Judgment & costs.....	\$ 231.76	
2. Rudgers Builders Material Co. Judgment & costs	1,278.51	
3. Bogart & Hanson Judgment & costs.....	64.78	
	<hr/>	
	\$1,575.05	

SCHEDULE "D."

17 FAIRWAY FUND

Proceeds of sale	\$17,000.00	
Proportionate share of general disburse- ments (Schedule J) 51% of \$57.04.....	\$29.09	30
½ of sales expenses (Schedule K).....	39.57	
	<hr/>	
	68.66	
	<hr/>	
Balance for distribution.....	\$16,931.34	

Receiver's Final Report and Account.

Thereout the following claims, in the order listed, should be paid:

10	1. Montclair Trust Co., Mortgage (N 61-90) dated May 27, 1927, Principal.....	\$13,500.00
	Interest from May 27, 1927, until June 8, 1928, @ 6%	834.75
	Fire Insurance premium advanced.....	123.75
	Interest thereon from 2/3/28 to 6/8/28.....	2.57
		<hr/>
		\$14,461.07
	2. Lizzie Boon, on mortgage (N 61-85) dated May 27, 1927, Principal.....	\$3,750.00
	Interest thereon from May 27, 1927, to June 8, 1928, @ 6%	231.25
		<hr/>
		\$3,981.25

SCHEDULE E.

15 FAIRWAY FUND

20	Proceeds of sale	\$15,000.00
	Proportionate share of general disbursements (Schedule J) 45% of \$57.04.....	\$25.66
	½ of Sales Expenses (Schedule K).....	39.58
		<hr/>
		65.24

Balance for distribution \$14,934.76

Thereout the following claims in the order listed should be paid:

30	1. Essex Title Guaranty & Trust Co. for principal and interest on mortgage as directed by decree in Re Essex Title Guaranty & Trust Co. vs. Harold Anderson, Inc., et als. (Docket 67, p. 51), Decree entered July 14, 1928.....	\$12,670.58
	Counsel and search fees allowed by said decree.	200.56
		<hr/>
		\$12,871.14
	2. Lizzie Boon—for principal and interest as allowed to her by said decree on her mortgage..	\$ 3,978.75

Receiver's Final Report and Account.

SCHEDULE F.

List of encumbrances and liens which property No. 17 Fairway, Montclair, was sold free of, the liens, if any, to attach to the proceeds.

1. Mortgage held by Montclair Trust Co., Recorded Book N 61, p. 90, securing principal sum of \$13,500.00		
2. Mortgage held by Lizzie Boon, Recorded Book N 61, p. 85, securing principal sum of.....	3,750.00	<u>10</u>
3. Mortgage held by Joseph M. Sullivan, Recorded Book D 62, p. 14 (this mortgage is a lien against No. 15 and No. 17 Fairway) securing principal sum of	5,383.00	
4. Mortgage held by George H. Stanton, Recorded Book Q 62, p. 102 (this mortgage is a lien against No. 15 and No. 17 Fairway) securing principal sum of	4,668.45	
5. Judgment obtained by Franklin Lumber Co. for \$368.06 damages and \$22.96 costs.....	391.02	
6. Judgment obtained by Franklin Lumber Co. for \$311.42 damages and \$20.13 costs.....	331.55	
7. Judgment obtained by Hyamler Pirson for \$200 damages and \$13.76 costs.....	231.76	20
8. Judgment obtained by Charles R. Speni and Anthony Maffucci for \$1,003.00 damages and \$68.77 costs	1,071.77	
9. Judgment obtained by Rudgers Builders Supply for	1,278.51	
10. Mechanics Lien claim of E. J. Burrowes & Co., recorded Book 21, p. 383.....	201.00	
11. Mechanics lien claim of Jacob Skoland, recorded Book 22, p. 9, apportioned as to this property.	132.82	
12. Mechanics lien claim of Olaf Gabrielson, recorded Book 22, p. 11, apportioned as to this property	100.82	
13. Mechanics lien claim of Thomas Thompson, recorded Book 22, p. 34, apportioned as to this property	252.17	30

Receiver's Final Report and Account.

SCHEDULE G.

List of Encumbrances and Liens which property No. 15 Fairway, Montclair, was sold free of, the liens, if any, to attach to the proceeds.

	1. Mortgage held by Essex Title Guaranty & Trust Co., recorded Book G 61, p. 493, securing principal sum of	\$12,500.00
10	2. Mortgage held by Lizzie Boon, recorded Book Z 60, p. 457, securing principal sum of.....	3,750.00
	3. Mortgage held by Joseph M. Sullivan, recorded Book D 62, p. 14 (This mortgage is a lien against No. 15 and No. 17 Fairway) securing principal sum of	5,383.00
	4. Mortgage held by George H. Stanton, recorded Book Q 62, p. 102 (This mortgage is a lien against No. 15 and No. 17 Fairway) securing principal sum of	4,668.45
	5. Judgment obtained by Franklin Lumber Co. for \$368.06 damages and \$22.96 costs.....	391.02
	6. Judgment obtained by Franklin Lumber Co. for \$311.42 damages and \$20.13 costs.....	331.55
20	7. Judgment obtained by Hjamler Pirson for \$200 damages and \$13.76 costs.....	213.76
	8. Judgment obtained by Charles R. Speni and Anthony Muffucci for \$1,003.00 damages and \$68.77 costs	1,071.77
	9. Judgment obtained by Rudgers Builder's Supply for	1,278.51
	10. Mechanics lien claim of Jacob Skoland recorded Book 22, p. 9, apportioned as to this property	188.12
	11. Mechanics lien claim of Olaf Gabrielson, recorded Book 22, p. 11, apportioned as to this property	193.47
30	12. Mechanics lien claim of Thomas Thompson, recorded Book 22, p. 34, apportioned as to this property	166.47
	13. Mechanics lien claim of Rudgers Builders Supply Co., recorded Book 22, p. 43.....	1,162.50
	14. Mechanics lien claim of Clark & Co.....	103.50

Receiver's Final Report and Account.

SCHEDULE H.

HAROLD ANDERSON, INC.

Claims Filed

1928			
March 9	Manhattan Rubber Mfg. Co. c/o Alexander T. Schenk, 763 Broad St., Newark, N. J.	\$395.25	<u>10</u>
March 10	Office of the Collector of Internal Revenue Central Ave. and Halsey St., Newark, N. J. plus interest @ 1% monthly until paid from Aug. 29, 1927..	246.42	
April 12	The Montclair Times Company.....	200.06	
April 13	Herrman & Son.....	554.00	
April 13	E. T. Burrowes Company.....	216.00	
April 13	Ernest Baechlin	45.00	
April 14	Franklin Lumber Co.....	722.57	
April 10	Overhead Door Sales Company, 50 Ramsey Ave., Hillside, N. J.....	95.00	
April 5	C. Johnson & Co. Inc., 345 Bloomfield Ave., Montclair, N. J.....	186.00	
April 12	Rudgers Builder's Supply Co., Montclair, N. J.	3,258.45	<u>20</u>
April 13	George M. Dobson, Frazer & Trimble, 484 Bloomfield Ave., Montclair, N. J....	2,140.00	
April 13	George M. Dobson c/o Frazer & Trimble	2,280.00	
April 13	George M. Dobson c/o Frazer & Trimble	1,860.00	
April 13	George M. Dobson c/o Frazer & Trimble	2,090.00	
April 13	Ernest Weiler, c/o Frazer & Trimble..	3,713.59	
April 13	Olaf A. Gabrielsen, c/o Frazer & Trimble	294.29	
April 13	Jacob Skoland, c/o Frazer & Trimble...	320.94	
April 13	Thomas Thompson, c/o Frazer & Trimble	418.64	
April 14	Montclair Builders' Material Co.....	5,383.00	
April 16	Edwin P. Bonnet.....	1,028.60	<u>30</u>
April 16	Miller & McGiffert.....	354.00	
April 16	Falcone Tile Corporation, c/o Nicholas La Vecchia	179.45	
April 16	Thomas J. Nolan, Inc.....	36.00	
April 17	Clark & Co., c/o Levy, Fenster & McCloskey, 45 Branford Place, Newark, N. J.	103.50	
April 20	B. & M. Nursery Tree Experts.....	100.00	
Aug. 7	William H. Barkhorn Co., c/o Levy, Fenster & McCloskey, 45 Branford Place, Newark, N. J.....	2,300.00	
April 30	Peter J. Heller Hardware Store, Montclair, N. J.....	568.47	<u>40</u>

Receiver's Final Report and Account.

	May	24	F. W. Dodge Corporation, 119 West 40th St., New York City.....	75.00
	May	5	Hjamler Person, c/o W. Ludlow James, 36 Macopin Ave., Montclair, N. J. (Nunc pro tunc).....	270.00
	April	30	Bogard & Hansen, Inc., c/o W. Ludlow James, 36 Macopin Ave., Montclair, N. J. (Nunc pro tunc).....	64.78
10	Sept.	14	New Jersey Bell Telephone Company, 281 Washington St., Newark, N. J.....	9.93

SCHEDULE I.

LIST OF CLAIMS ALLOWED AS GENERAL CLAIMS

	1928			
	March	9	Manhattan Rubber Mfg. Co., c/o Alexander T. Schenk, 763 Broad St., Newark, N. J.	\$395.25
	April	12	The Montclair Times Company.....	200.06
	April	13	Herrman & Son.....	554.00
20	April	13	E. T. Burrowes Company.....	216.00
	April	13	Ernest Beechlin	45.00
	April	10	Overhead Door Sales Company, 50 Ramsey Ave., Hillside, N. J.....	95.00
	April	5	C. Johnson & Co., Inc., 345 Bloomfield Ave., Montclair, N. J.....	186.00
	April	12	Rudgers Builder's Supply Co., Montclair, N. J.	1,979.94
	April	13	George M. Dobson, Frazer & Timber, 484 Bloomfield Ave., Montclair, N. J... ..	2,140.00
	April	13	George M. Dobson, c/o Frazer & Trimble	2,280.00
	April	13	George M. Dobson, c/o Frazer & Trimble	1,860.00
	April	13	George M. Dobson, c/o Frazer & Trimble	2,090.00
30	April	13	Ernest Weiler, c/o Frazer & Trimble.. ..	3,713.59
	April	13	Olaf A. Gabrielsen, c/o Frazer & Trimble	294.94
	April	13	Jacob Skoland, c/o Frazer & Trimble... ..	320.94
	April	13	Thomas Thompson, c/o Frazer & Trimble	418.64
	April	14	Montclair Builders' Material Co.....	5,383.00
	April	16	Edwin P. Bonnet.....	1,028.60
	April	16	Miller & McGiffert.....	354.00
	April	16	Falcone Title Corporation, c/o Nicholas La Vecchia	179.45
	April	16	Thomas J. Nolan, Inc.....	36.00
40	April	17	Clark & Co., c/o Levy, Fenster & McCloskey, 45 Branford Place, Newark, N. J.	103.50

Receiver's Final Report and Account.

April	20	B. & M. Nursery Tree Experts.....	100.00	
Aug.	7	William H. Barkhorn Co., c/o Levy, Fenster & McCloskey, 45 Branford Place, Newark, N. J.....	2,300.00	
April	30	Peter J. Heller Hardware Store, Montclair, N. J.....	568.47	
May	24	F. W. Dodge Corporation, 119 West 40th St., New York City.....	75.00	
Sept.	14	New Jersey Bell Telephone Company, 281 Washington St., Newark, N. J.....	9.93	10
			<hr/>	
			\$26,926.66	

SCHEDULE J.

GENERAL DISBURSEMENTS

1928				
Aug.	17	Louis Auerbacher, Jr., approving bond of Receiver	\$5.00	
July	30	Fidelity and Deposit Company of Md., Premium on Bond No. 3410487.....	10.00	20
June	14	Newark Evening News, Publishing Notice to creditors	14.04	
Oct.	22	Artcraft Sign Co., Sign on 260 Forest Avenue, Glen Ridge, N. J.....	8.50	
Aug.	8	Registrar of Deeds, Release of Mortgage	2.00	
Sept.	13	Rosella Fishbein, Testimony.....	17.50	
			<hr/>	
			\$57.04	

SCHEDULE K.

SALES EXPENSES

1928				
June	14	The Montclair Times, Publishing Notice of Sale	\$39.52	
June	14	Newark Evening News, Publishing Notice of Sale	30.99	
June	14	Newark Evening News, Publishing Notice of Sale	8.64	
			<hr/>	
			\$79.15	30

*Order to Show Cause.***Order to Show Cause.**

Filed November 5, 1928.

IN CHANCERY OF NEW JERSEY.

10

*Between*FRANKLIN LUMBER COMPANY,
*Complainant,**and*HAROLD ANDERSON, INC.,
*Defendant.**On Bill, &c.*
Order to
Show Cause.

20 This matter being opened to the Court by
Koehler & Augenblick, solicitors for the Receiver,
and it appearing that the Receiver of the defend-
ant company has filed with this court his final
report and account, and the manner in which he
has performed his trust and from which it ap-
pears that there has come into the hands of said
Receiver the sum of \$33,500; that he has dis-
bursed thereout the sum of \$136.19, leaving a
balance in his hands of \$33,363.81, and

30 It further appearing from the report of the
said Receiver that the said sum now in his
hands should be divided into three funds, one the
proceeds of the sale of Trinity Place property,
the second the proceeds of 17 Fairway property,
and the third the proceeds of 15 Fairway fund,
all in the Town of Montclair, there remaining in
the hands of the Receiver from the Trinity Place
fund for distribution the sum of \$1,497.72 and
from the 15 Fairway fund for distribution the
sum of \$14,934.76 and from the 17 Fairway fund
40 for distribution the sum of \$16,931.34 and

Order to Show Cause.

It further appearing that the Receiver has allowed certain prior preferred claims and certain preferred claims to be paid out of the Trinity Place fund in the total sum of \$2,581, and has allowed as against the 15 Fairway fund prior claims to be paid thereout in the sum of \$16,849.89, and has allowed certain prior claims to be paid out of the 17 Fairway fund in the sum of \$18,442.32, and the said Receiver having also allowed certain general or common claims in the sum of \$26,926.66 and the Receiver now praying that his report and account may be ratified, allowed and confirmed, and that the corporation may be dissolved and that an allowance may be made to the said Receiver for his services and to counsel for the Receiver for their services as such counsel, and to the solicitors of the complainant for their services, and that the balance remaining in his hands as such Receiver may be distributed in such manner as the Court shall direct,

It is, on this 5th day of November, 1928, ORDERED that the creditors and stockholders of the above-named defendant company show cause before the Chancellor at the Chancery Chambers in Newark, on Tuesday, the 13th day of November, 1928 at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the final report and account of the said Receiver should not be in all things ratified and confirmed, and why proper allowance should not be made to the said Receiver for his services in the administration of the estate of the defendant company as well as to the solicitors of the complainant and to the counsel for the Receiver for their services and why the Receiver should not be directed to pay the claims by him allowed in the

10

20

30

40

Order to Show Cause.

manner and in the order set forth in the said Receiver's report, and distribute the residue remaining in his hands after the payments aforesaid, and the payment of taxed costs in this suit amongst the general creditors of the defendant company in the proportion that their respective claims bear, in the amount to be distributed, and why the said Receiver should not after making such payments, be discharged from his office and all liability thereunder, and his bond cancelled and why the defendant company should not be dissolved.

10 It is further ORDERED that a copy of the Final Report and Account of the said Receiver do remain on file in the Office of the Sergeant-at-Arms of this Court, at the Chancery Chambers in Newark, until the return day of this rule to show cause.

20 It is further ORDERED that said report and account be referred to Richard Stockton, Esq., one of the Special Masters of this Court to state and audit the account, and report to the Court on or before the 13th day of November, 1928.

30 It is further ORDERED that a true copy of this order which need not be certified, be mailed to all of the stockholders and to all of the creditors of the defendant company, whose claims have been allowed, within four days from the date hereof, with the postage thereon prepaid, to their last known post office addresses respectively.

E. R. WALKER,

C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Order Approving Receiver's Final Account, etc.

**Order Approving Receiver's Final Account and
Report and Discharging Receiver.**

Filed November 13, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANKLIN LUMBER COMPANY, a corporation, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., <i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Order</i></p> <p><i>Approving</i></p> <p><i>Receiver's</i></p> <p><i>Final</i></p> <p><i>Account and</i></p> <p><i>Report and</i></p> <p><i>Discharging</i></p> <p><i>Receiver.</i></p>	<p><u>10</u></p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------

An order to show cause having been made here-
in on the fifth day of November, 1928, wherein
it was ordered that the creditors and stock-
holders of the above-named defendant company
show cause before the Court why the Receiver's
final account and report should not be in all
things ratified and confirmed, and why proper
allowance should not be made to the said Re-
ceiver for his services in the administration of
the estate of the defendant company as well
as to the solicitors of the complainant, and to the
counsel for the Receiver for their services; and
why the Receiver should not be directed to pay
the claims by him allowed in the manner and
in the order set forth in said Receiver's report,
and distribute the residue remaining in his hands
after making the payments aforesaid and pay-
ment of taxed costs in this suit and why the
said Receiver should not, after making such pay-
ments, be discharged from his office and all lia-
bility thereunder and his bond cancelled, and

20

30

40

Order Approving Receiver's Final Account, etc.

why the defendant company should not be dissolved; and

It appearing that the said Final Report and Account of the said Receiver has remained on file in the office of the Sergeant-at-Arms in the Court of Chancery at the Chancery Chambers in
10 Newark as directed by said order to show cause; and

It appearing that copies of said order to show cause together with a notice of the filing of said report and account and a statement of the allowances to be asked for by the said Receiver and his counsel and by the solicitors for the complainant as compensation for their services, having been mailed to each of the creditors of the defendant company whose claims have been
20 allowed as well as to the stockholders of the defendant company as directed by said rule, due proof of the mailing thereof being now presented and filed, and

It appearing that by said order to show cause it was further ordered that the said report and account be referred to Richard Stockton, Esq., one of the Masters of said court, to state and audit the same and report to said court, and

It appearing that the said Richard Stockton
30 has audited and stated the final account of the said Receiver and has found the same in all things correct and true as by his report now presented appears,

It is, thereupon, on this 13th day of November, 1928, on motion of Koehler & Augenblick, of counsel with the Receiver, ORDERED, ADJUDGED and DECREED that the Final Account and Report of the Receiver in this cause be and the same hereby is allowed, ratified and confirmed in all things,
40 and

Order Approving Receiver's Final Account, etc.

It is ORDERED that the said Receiver be allowed for his services the sum of \$4,000. and that the counsel for the said Receiver be allowed the sum of \$3,000. together with the costs of these proceedings to be taxed to include as well their services as solicitors for the complainants in filing the bill of complaint; and

10

It is further ORDERED that there be allowed and paid to Richard Stockton, Esquire, Special Master, for his services in stating and auditing the Receiver's final account the sum of \$500., and

It is further ORDERED that the said disbursements hereby ordered to be made for allowances and fees be distributed amongst the several funds now in the hands of the Receiver in the following proportions, to wit: Four per cent. of said disbursements are directed to be borne by the Trinity Place fund; fifty-one per cent. thereof is directed to be borne by the #17 Fairway fund; and forty-five per cent. thereof is directed to be borne by the #15 Fairway fund; and

20

It is further ORDERED that the said Receiver do distribute and apportion the said expenditures hereby ordered to be made in the proportions aforesaid, and that after deducting from each of said funds the proportionate amount of the allowances and fees hereby ordered to be paid, that the said Receiver pay and disburse to the creditors of the defendant company the sums shown by him to have been allowed in the manner and in the order and priority set forth in his said final report so far as the funds in his hands will extend.

30

It is further ORDERED that the said Receiver file with the Clerk of this Court a statement of his fees, disbursements and expenses in this proceeding together with a statement and report

40

Order Approving Receiver's Final Account, etc.

of the distribution and disposition of the moneys that have come to his hands in this cause, and in case the Receiver shall be unable to comply with the directions of this order in the payment or disbursement of any of the moneys aforesaid, he shall in such case deposit said moneys with the Clerk of this court pursuant to the rules thereof.

10

It is further ORDERED, ADJUDGED and DECREED that upon making the payments and disbursements aforesaid and carrying out the directions of this decree, the said Receiver be discharged from all obligations in relation to said trust except as to such moneys as may hereafter come to his hands as such Receiver, and

20

It is further ORDERED, ADJUDGED and DECREED that the above-named defendant company Harold Anderson, Inc., be and it hereby is dissolved.

E. R. WALKER,

C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

30

40

*Order Approving Receiver's Final Account, etc.***Statement of Distribution by Receiver.**

Filed November 20, 1928.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	10
FRANKLIN LUMBER COMPANY, a corporation, <i>Complainant,</i>	<i>On Bill, &c.</i> <i>Statement of</i> <i>Distribution</i> <i>by Receiver.</i>
<i>and</i> HAROLD ANDERSON, INC., <i>Defendant.</i>	

Balance in hands of receiver, as per final account	\$33,363.81	20
Disbursements as per order of the Court of Chancery of November 13th, 1928:		
C. Wallace Vail, receiver's fees.....	\$ 4,000.00	
Koehler & Augenblick, counsel for receiver, allowance	3,000.00	
Koehler & Augenblick, taxed costs..	100.00	
Richard Stockton, Special Master's fees for auditing receiver's accounts	500.00	
Collector of Internal Revenue.....	283.38	
Essex Title Guaranty & Trust Co....	11,514.76	
Montclair Trust Company.....	13,055.34	
Rudgers Builders Material Co.....	151.72	30
Franklin Lumber Co.....	391.02	
Franklin Lumber Co.....	331.55	
Hjamler Person	28.51	
Bogart & Hansen, Inc.....	7.53	
	\$33,363.81	\$33,363.81

Respectfully submitted,

C. WALLACE VAIL,
Receiver.

Order Approving Receiver's Final Account, etc.

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

C. WALLACE VAIL, of full age, being duly sworn according to law, on his oath deposes and says:

10 I am the receiver for Harold Anderson, Inc., I have read the foregoing statement, know the contents thereof and say that the matters and things therein contained are true.

C. WALLACE VAIL.

Subscribed and sworn to before
 me this 19th day of November,
 1928.

HILDA D. ZIMMER,
 A Notary Public of New Jersey.

20

30

40

Opinion of Vice-Chancellor.

Opinion.

Filed March 29, 1929.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANKLIN LUMBER COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., <i>Defendant.</i></p>	}	<p><i>Opinion.</i></p> <p><i>On Order to Show Cause Why Receiver's Final Report and Account Should not be Confirmed and Allowances Made.</i></p>	<p>10</p> <p>20</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	--------------------------------------------------------------------------------------------------------------------------------------------------	---------------------

Appearances:

Messrs. Koehler & Augenblick, for the Receiver.

Mr. Robert M. Boyd for objecting mortgagees.

CHURCH, V.-C.

The order appealed from in this matter was entered upon the return of an order to show cause why the final report and account of the receiver for the defendant corporation should not be confirmed. 30

An appeal having been taken, I feel that I should state the reasons why I advised the order.

The defendant corporation was decreed to be insolvent under the General Corporation Act, a statutory receiver was appointed and the statutory injunction issued.

The receiver converted all the assets of the defendant corporation into cash, and had in his 40

Opinion of Vice-Chancellor.

hands for distribution, \$33,363.91, which money was the proceeds of the sale of three parcels of real estate.

10 The receiver asked for an allowance of \$4,000 for his services, and for an allowance of \$3,000, for the services of his counsel, who were also solicitors for complainant, the latter allowance to be for their services in both capacities. These allowances were made in the amounts asked.

20 The receiver reported that the moneys in his hands consisted of three funds, and in his report he determined the order in which these moneys should be distributed; he also recommended that the general expenses of administration of the estate including his fees and those of his counsel, should be pro rated among the several funds.

Of the numerous claimants to the several funds, Mr. Boyd was the only one who appeared in opposition. He represents two mortgagees, one of whom is interested in the "15 Fairway Fund" and the other of whom is interested in the "17 Fairway Fund." No exceptions to the report have been filed by anyone including Mr. Boyd.

30 On the return of the order to show cause, Mr. Boyd did not question the determination of the Receiver as to the order of distribution of the several funds, and the Receiver's determinations appearing to be correct, that part of his report was confirmed, together with the other matters set up in the report. Nor did Mr. Boyd question that the general and administration expenses should be distributed among the three funds in the proportion that each fund bears to the amount
40 to be distributed. That was the rule, adopted in

Opinion of Vice-Chancellor.

the case of *Meister v. J. Meister, Inc.*, 6 N. J. Adv. p. 1136; decided by Vice-Chancellor Berry, and seems to me to be equitable.

The only objections voiced were by Mr. Boyd and they were as to the allowances asked for by the receiver for his services and those of his counsel; not that the amounts asked for are too high, but that if these allowances are made, the two mortgagees represented by him would not be paid the full amount of principal and interest which the receiver found by his report to be due them. From my knowledge of the proceedings taken in this matter, and from the uncontradicted statements made before me in open court, I am satisfied that the services of the receiver and of his counsel are fairly worth the amounts respectively requested, taking into consideration the quantum of the estate, pains, risk, trouble, and avails gotten, and the value of the services to the estate.

The receiver and his counsel have conducted the affairs of this estate in a highly economical, and very advantageous manner, and to refuse them reasonable compensation for their services would be a grave injustice.

It is well settled that the expenses of administering the affairs of an insolvent corporation, are prior to all liens, special and general, upon the funds of the corporation;

Attorney-General v. Linden Cemetery Ass'n., 90 N. J. Eq. 404;

Seidler v. Branford Restaurant, 97 N. J. Eq. 153, affirmed *Id.* 531;

Greenbaum v. Lafayette etc., 97 N. J. Eq. 536;

Bankers Trust Co. v. Maxson, 100 N. J. Eq. p. 14.

10

20

30

40

Opinion of Vice-Chancellor.

I felt that the objections urged by Mr. Boyd should not, in view of the above rule, cause me to refuse just compensation to the receiver and his counsel, for services well and economically rendered under the direction of this court.

10

20

30

40

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

Filed February 11, 1929.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANKLIN LUMBER COMPANY, a corporation,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC.,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p style="font-size: 2em;">}</p> <p><i>On Bill, &c.</i></p> <p><i>Notice of</i></p> <p><i>Appeal.</i></p>	10
<p>MONTCLAIR TRUST COMPANY,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., et al.,</p> <p style="text-align: right;"><i>Defendants.</i></p>		20
<p>ESSEX TITLE GUARANTEE AND TRUST CO.,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., et al.,</p> <p style="text-align: right;"><i>Defendants.</i></p>		30

Montclair Trust Company and Essex Title Guaranty and Trust Company, creditors of Harold Anderson, Inc., the defendant, hereby appeal from so much of the final decree and order approving Receiver's final account and report and discharging Receiver, made in the above-entitled cause on November 13, 1928, by the Chancellor on the advice of Vice-Chancellor Church.

1. As allows the Receiver for his services the sum of \$4,000 and counsel for the Receiver for their services the sum of \$3,000.

2. As orders the disbursements for allowances and fees to be distributed amongst the several funds in the following proportions: 4% to be

Notice of Appeal.

borne by Trinity Place fund; 51% by #17 Fairway fund, and 45% by #15 Fairway fund.

3. As orders the distribution and apportionment of the said expenditures in the proportions set forth; and

- 10 4. As orders, after the deduction from each of said funds of the proportionate amount of the allowances and fees to be paid, that the Receiver pay and disburse to the creditors of the defendant company the sums shown by him to have been allowed in the manner, order and priority set forth in his final report, to the Court of Errors and Appeals in the last resort in all causes.

Dated, January 28, 1929.

20 ROBERT M. BOYD, JR.,
Solicitor for and of Counsel with Montclair Trust Company and Essex Title Guaranty and Trust Company.

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

30 ROBERT M. BOYD, JR.,
Of Counsel with Montclair Trust Company and Essex Title Guaranty and Trust Company.

Service of a copy of the within notice of appeal is hereby acknowledged this 8th day of February, 1929.

KOEHLER & AUGENBLICK,
Solicitors for and of Counsel with
Receiver and Complainant.

Petition of Appeal.

Petition of Appeal.

Filed February 21, 1929.

New Jersey Court of Errors and Appeals

<p><i>Between</i></p> <p>FRANKLIN LUMBER COMPANY, a corporation, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., <i>Defendant.</i></p>	<p><i>On Appeal from the Court of Chancery. Petition of Appeal.</i></p>	10
<p>MONTCLAIR TRUST COMPANY, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., et al., <i>Defendants.</i></p>		
<p>ESSEX TITLE GUARANTY AND TRUST CO., <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HAROLD ANDERSON, INC., et al., <i>Defendants.</i></p>		20

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Montclair Trust Company and Essex Title Guaranty and Trust Company, the appellants in the above-entitled cause, respectfully shows that: 30

1. Petitioners, creditors of Harold Anderson, Inc., the defendant in the Court of Chancery, find themselves aggrieved by a final decree and order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 13, 1928, in a certain cause in said Court of Chancery wherein the said Franklin Lumber Company, a 40

Petition of Appeal.

corporation, was complainant, and Harold Anderson, Inc., was defendant, in the following respects, to wit:

- 10 (1) That the said decree and order allows the Receiver for his services the sum of \$4,000 and counsel for the Receiver for their services the sum of \$3,000.

And petitioners appeal from that part of the decree and order of the Chancellor aforesaid upon the ground that the same is erroneous and improper, in that the said allowances made to the Receiver and counsel for services rendered are excessive, above the value of the services rendered and grossly disproportionate to the amount of money handled and the labor involved.

- 20 (2) That the said decree and order directs the disbursements for allowances and fees to be distributed amongst the several funds in the following proportions: 4% to be borne by Trinity Place fund; 51% to be borne by #17 Fairway fund, and 45% by #15 Fairway fund.

(3) That the said decree and order directs the distribution and apportionment of the said expenditures in the proportions set forth.

- 30 (4) That the said decree and order directs, after the deduction from each of said funds of the proportionate amount of the allowances and fees to be paid, that the Receiver pay and disburse to the creditors of the defendant company the sums shown by him to have been allowed in the manner, order and priority set forth in his final report.

And petitioners appeal from these parts of the decree and order of the Chancellor aforesaid

Petition of Appeal.

upon the ground that the same are erroneous and improper in that the disbursements for allowances, fees and expenditures were ordered distributed among the several funds in the wrong proportions and by the wrong method, in that by reason of the said wrongful method of distribution, general creditors were paid in full and given preference over petitioners who held valid first mortgages on the said properties, and in that the moneys realized from the sale of said properties should have been applied first to paying off the said mortgages of petitioners. 10

Petitioners therefore pray that the said order and decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper. 20

ROBERT M. BOYD, JR.,
Solicitor for and of Counsel with Montclair Trust Company and Essex Title Guaranty and Trust Company, Appellants.

30

40

Answer to Petition of Appeal.

Answer to Petition of Appeal.

Filed March 27, 1929.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

FRANKLIN LUMBER COMPANY, a
corporation,

Complainant,

and

HAROLD ANDERSON, INC.,

Defendant.

MONTCLAIR TRUST COMPANY,
Complainant,

and

HAROLD ANDERSON, INC., *et al.*,

Defendants.

20

ESSEX TITLE GUARANTY AND
TRUST CO.,

Complainant,

and

HAROLD ANDERSON, INC., *et al.*,

Defendants.

*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition of
Appeal.*

30

The answer of C. Wallace Vail, Receiver of Harold Anderson, Inc., the appellee herein to the petition of appeal of Montclair Trust Company and Essex Title Guaranty and Trust Co., the appellants herein.

40

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained for answer thereto nevertheless admits that an order was made and entered in the Court of Chancery of New Jersey on November 13, 1928, in a certain cause in said Court of Chancery wherein Franklin Lumber Company was complainant and Harold Anderson, Inc. was defendant for the purposes in said petition men-

Answer to Petition of Appeal.

tioned and as therein set forth; but as to the substance and form of said order, this appellee begs leave to refer thereto when the same shall be produced.

This appellee, is advised and believes that the said order is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee. 10

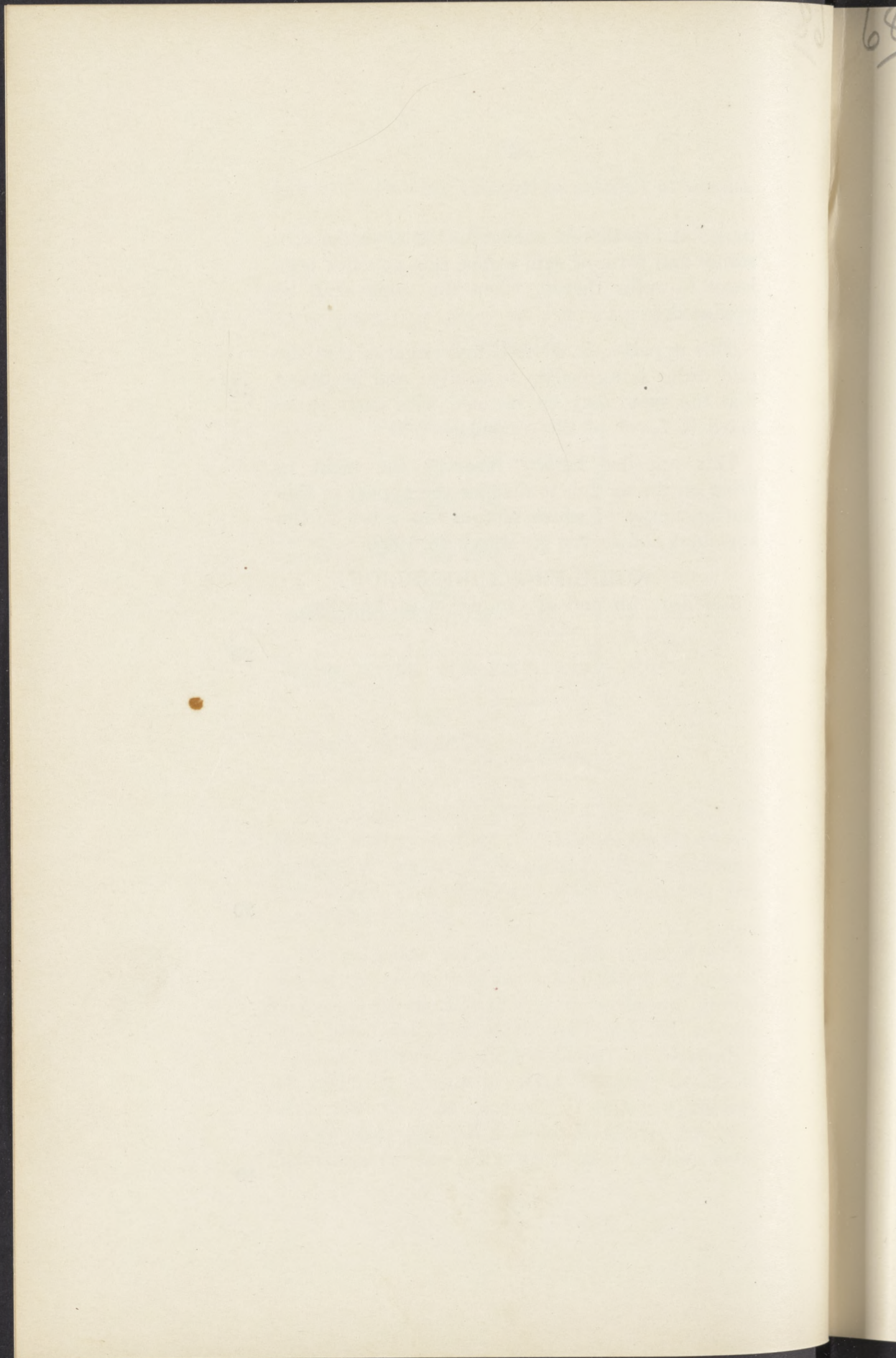
This appellee hereby reserves the right to bring on the motion to dismiss the appeal in this matter, notice of which motion was given to the appellant and served on March 23, 1929.

KOEHLER & AUGENBLICK,
Solicitors for and of Counsel with Appellee.

20

30

40



New Jersey Court of Errors and Appeals

Between

FRANKLIN LUMBER COMPANY,
a corporation,

Complainant,

and

HAROLD ANDERSON, INC.,

Defendant.

MONTCLAIR TRUST COMPANY,
Complainant,

and

HAROLD ANDERSON, INC., *et al.*,

Defendants.

ESSEX TITLE GUARANTY AND
TRUST Co.,

Complainant,

and

HAROLD ANDERSON, INC., *et al.*,

Defendants.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF RESPONDENT.

Statement of Facts.

On February 20, 1928, on a bill alleging insolvency and praying for a statutory injunction and the appointment of a receiver under the corporation act, Mr. C. Wallace Vail was appointed receiver of Harold Anderson, Inc., and the creditors and stockholders of the defendant company were ordered to show cause on February 28, 1928, why a statutory receiver should not be appointed, and on the return of the order to show cause Mr. Vail was continued as receiver under

the statute and the defendant corporation was adjudged insolvent and enjoined from exercising its franchises. The receiver entered upon the discharge of his duties and as a result of the hearings conducted before him he filed a petition for leave to sell real estate which appears on pp. 3 to 13 of the state of the case. On this petition an order to show cause was allowed and on the return thereof counsel for the present appellants appeared before the court; the record does not show nor was there offered any evidence to contradict the allegations of the petition; in fact counsel for these appellants orally told the court that he felt that the situation with reference to the properties described in the petition for sale was so muddled up that the only way to clear the situation was by a sale free and clear of encumbrances; that this was typically a case where section 81 of the corporation act should be invoked. Accordingly such an order was thereupon entered, there having been no objection thereto, and from this order no appeal has been nor is being taken.

At the time the order to sell was entered the appellants had pending two separate foreclosure suits, and these were various liens which the appellants in their foreclosure suits claimed were subordinate to their respective mortgages but the said lienors contested the validity or the priority of these several mortgages; and at the time of entering the order to sell above referred to appellants' counsel asked leave and obtained orders to permit him to go to final decree in the foreclosure suits, but only for the purpose of proving the amounts due on the mortgages and not to settle the priorities.

The receiver conducted a sale of the property ordered to be sold and the property was sold to a client of counsel of the appellants who held

mortgages subsequent to those of appellants and thereafter the receiver conducted hearings in order to fix the amounts due and the priorities of the various liens and encumbrances. The property upon which Montclair Trust Company held a mortgage was subject to 13 other liens, which were contesting *inter sesse* the priority and the extent of the respective liens and the property upon which Essex Title Guaranty and Trust Co. held a mortgage was encumbered by 12 other liens which were likewise contesting *inter sesse*, the extent and priority of the various encumbrances including the mortgages held by these appellants.

The receiver also came into possession of a parcel of land on Trinity Place, Montclair, title to which was held in trust by one Davega under a trust agreement which is more particularly referred in the receiver's report on pages 27 and 28 of the state of the case and as appears from pages 26 and 27 of the state of the case the receiver had title to a parcel of property on Forest street, Glen Ridge. This latter property was so heavily encumbered by mortgages that the receiver thought it advisable to permit the foreclosure suit being conducted by Mr. Boyd to proceed and Mr. Boyd did in his foreclosure suit sell this property and it did not bring sufficient to leave any equity for the defendant company or its receiver.

The only order appealed from in this proceeding is the order approving the receiver's final report and account and making allowances to the receiver and his counsel and discharging the receiver and ordering distribution, and only parts of that order are appealed from. The record printed in this case only contains such parts of the proceedings as were in the opinion

of counsel for the appellants necessary for this court to have on the appeal. We might say that this record is but a small part of the entire record.

The order appealed from was entered on the return of an order to show cause, on November 13, 1928. All the creditors of the defendant company were given notice of the compensation that would be asked for by the receiver and his counsel and a copy of the report of the receiver remained on file with the Sergeant-at-Arms at the Chancery Chambers in Newark from the date of the order to show cause until the return date thereof; and the only persons who appeared were the appellants by their counsel. Counsel for the appellants stated to the court that while the requests of the receiver and his counsel for compensation were reasonable under all the circumstances, he did not think that the allowances should be made for the sums requested because, to do so would make it impossible for his clients to be paid in full, and he questioned the right of the Court of Chancery to take any part of the moneys which would be payable to his clients and to use it for administration expenses. No question was raised as to the proportions in which the general administration expenses should be borne by the three funds which were in court in the hands of the receiver.

ARGUMENT OF LAW.

POINT ONE.

Questions not raised in the court below should not be considered in this court on appeal.

This court in the case of *Shupe v. The State of New Jersey*, 88 N. J. L. 610 said:

“It is a settled rule that a party need not be heard on a point not taken or a matter not

raised and considered in the court below. See the cases in N. J. Dig. Anno., tit. 'Appeal and Error,' V. (A). And this applies in a court of last resort as to questions which could have been, but were not, raised in an intermediate court of appeals."

In the case of *Polis v. Tice*, 28 N. J. E. 432, Chancellor Runyon sitting as Ordinary in the Prerogative Court held that fairness requires that on an appeal from the Orphan's Court to the Prerogative Court that the appellant be confined on the hearing of the appeal to the objections made below. These cases are but typical of a long line of cases which hold that on appeal a court of review will not hear a case on any other theory but that on which it was heard in the lower court. See *Trimmer v. Adams*, 18 N. J. Eq. 505, also *Garretson v. Appleton*, 58 N. J. L. 386; *Queen v. Jennings*, 93 N. J. L. 353.

This case having been submitted to the Court of Chancery on the return of the order to show cause why the order appealed from should not be entered on one question only, namely, that the Court of Chancery was without authority to make an allowance part of which would have to be borne by these appellants, the holders of mortgages, and decided by the court on that theory; we submit that that could be the only ground of appeal in this case. That objection has been abandoned by the appellants and they now admit that there is no legal basis to such an objection (see appellants' brief, p. 8, paragraph 3). We therefore submit on this point that the order below should be affirmed.

POINT TWO.

The allowances made by the Court are reasonable under all the circumstances.

The appellants' argue in their brief that the *quantum* of the estate is the controlling factor in determining the amount of compensation to be allowed for administration thereof and they cite the case of *Unger v. Newlin, etc.*, 95 N. J. Eq. 16; *Bock v. Columbia Brewing Co.*, 99 N. J. Eq. 617. In both of these cases the court held as a matter of law that receivers will be compensated for their services in such sums as they are fairly and reasonably worth somewhat apporportioned to the amount which the receiver has received and administered; and that allowances will be made to counsel retained by the receiver for services to the receiver in relation to the trust. Of course the *quantum* of the estate is taken into consideration but that is not the controlling factor in determining the amount of compensation. The amount of compensation is to be such a sum as the services are "fairly and reasonably worth." We can appreciate that the services of a receiver are sometime fairly and reasonably worth more than the amount of the fund which he has in hand. On the other hand a receiver may sometime be appointed in a case where the work involved is slight and the amount of money which comes into his hands is very large and for those reasons the services of the receiver are not compensated on a percentage basis calculated on the funds which he handles. This appears to be a fact from the appellants' own brief and it shows that in the *Unger* case, *supra*, the allowance was 4½ per cent. of the amount handled; in the *Bock* case, *supra*, 8 per cent. of the amount handled and in the *Meister* case referred to on page 5 of that brief, 11 per cent. of

the amount handled; and there are many instances where the allowances made are much higher in percentage. It is the duty of the Court before which the proceedings are had, having regard to all the circumstances, including the pains, time expended, the risk and the trouble involved and having regard to the fund in the receiver's hands, to make an allowance which will be a fair compensation.

In support to their contention that the labor involved in this case was very small, appellants state in their brief that the services rendered in this matter were of a routine nature and they would have the Court believe, as they state on pages 6 and 7 of their brief, that the entire services consisted of depositing four checks and issuing twenty. The answer to this argument is to call the attention of the Court to the receiver's final account and report which appears in the state of the case, a perusal of which will show it is a highly complicated piece of bookkeeping to say the least. Moreover, as we said before, this State of the Case represents but a small part of the work performed by the receiver, there were numerous and perplexing questions of law raised in the course of these proceedings. A great deal of negotiation and investigation was done, and there was a vast amount of work performed both by the receiver and by his counsel. The court below being cognizant of the labor involved made the allowances that it did.

There is a legal presumption that the allowances made were proper. It is such a well-settled rule of law and equity that no judgment, order or decree will be reversed unless it is shown to be erroneous, even when it does not lie in discretion, that it is needless to cite authority, es-

pecially is this so when the matter lies in discretion.

This court in the case of *Fidelity Trust Company v. J. H. Halsey Smith, Ltd.*, 93 N. J. Eq. 161, in disposing of an appeal as to the size of an allowance made to a receiver and his counsel, speaking through Mr. Justice Parker, said:

“The fundamental rule is that the amount lies in the discretion of the Court having regard to all the circumstances; that the action of the Court is presumptively correct, and will be up-held if it does not plainly appear that there has been an abuse of discretion. 34 Cyc. 466; Trustees of Greenough, 105 U. S. 527; *Stuart v. Bouhwear*, 133 U. S. 78.”

We respectfully submit that there is nothing before this court from which it ought to say that the Court of Chancery abused its discretion in the amount of compensation which it awarded to the receiver and his counsel in this case and every intendment is that the allowances made by the Court are reasonable under all the circumstances. This is especially true when we bear in mind that counsel for the appellants on the return of the order to show cause why the allowance should not be made, appeared before the Court and in open court said that he considered the services rendered reasonably worth the allowances requested, and we submit that he should not now be heard to complain, for if it be true that the allowances were excessive, the appellants themselves have caused the Court below to make the order by which they now claim themselves to be aggrieved and it should not lie in their mouths to complain.

POINT THREE.

The order appealed from properly directs the Trinity Place Fund to bear four per cent of the fees and allowances.

The four per cent. was arrived at as the proportionate amount which the money received from that fund bore to the total sum which came into the hands of the receiver and on that basis the three funds were charged with the fees and allowances made. Appellants argue that this was a general fund and should have been first exhausted in the payment of administration expenses before the funds in which they were interested were used at all for that purpose.

We fail to see why the one fund is more exempt from the payment of administration expenses than the other. All of the funds were subject to certain liens, all of the funds were the proceeds from the sale of real estate and in fact all of the funds bore the same percentage of general administration expenses as appears from the final account of the receiver (Schedule J. page 41 of the State of the Case) as they did of the fees and allowances, yet there is no objection raised to that. Counsel complains that the complainant in this case was paid in full instead of having been relegated as a subsequent encumbrancer to the two Fairway funds. This contention is erroneous for by the receiver's report it appears that the Franklin Lumber Company was reported to be an encumbrancer against all three funds by virtue of judgments and levies which it held. It could not share, under the receiver's findings, in the Fairway funds because the funds did not extend so far; but it did come in for distribution out of the Trinity Place fund and there was sufficient moneys in

that fund. We submit that the reasoning of the receiver as set forth in his final account and report is correct and that that creditor was entitled to be paid its judgments out of the Trinity Place fund just as other judgment creditors who did not make levies and thereby failed to obtain priority over other judgment creditors shared in the Trinity Place fund pro rata.

Moreover this objection was not raised before the Court when the report came up for approval. The appellants were present and did not dispute the correctness of the report and account in the court below, and they should not now be heard to complain. We respectfully submit on this point that the Fairway fund, being the fund arising from the sale of the property on which the appellants held liens, is just as much burdened with the expense of administration as was the Trinity Place fund which was likewise burdened with liens.

No appeal, as we said before, is pending from the order directing the sale of the Fairway properties free and clear of appellants' liens as well as numerous other liens, yet by indirection appellants in their brief attack this order and contend that it was a device to increase the funds passing through the hands of the receiver and they complain that trustees and institutions holding valid first mortgages cannot recover the full amount of their liens.

We submit that the statement which was made to the Court by appellants' counsel when the order to sell was entered, namely that this was a typical case for such an order was and still remains correct. These properties were encumbered by numerous and various encumbrances, attacking each other; uncompleted buildings

open to the elements and rapidly deteriorating in value. While we are not called upon to justify the order which is not appealed from and which was entered under the circumstances referred to, yet nevertheless, under those facts and there was no dispute, in fact there was concurrence, the Court of Chancery did the only thing that it should have done, that is ordered an expeditious sale of the property to preserve it. The size of the bids were such that the properties were preserved for these appellants. If trust companies or banking institutions may sometimes suffer through a sale free and clear of their lien when they hold first mortgages there are several answers to their delimma, one is they should not engage in the highly adventurous undertaking of lending trust funds on construction loans simply because the "bonus" or commission which they may receive on such an investment is more than that which they would ordinarily receive. Another answer is that they should take the care and trouble to see to it that what purports to be a valid first mortgage is in fact an unassailable and valid first mortgage; but if bank institutions and trust companies lend money on construction mortgages and do not take proper precautions to see to it that these loans are made under proper legal safeguards to responsible persons, and the result is a loss to the mortgagee they should not complain.

We respectfully submit that it does not appear that the appellants have been aggrieved by the parts of order complained of and the order should be affirmed.

Respectfully submitted,

KOEHLER & AUGENBLICK,
Solicitors for and of Counsel with Respondent,
C. Wallace Vail, Receiver of Harold Ander-
son, Inc.

