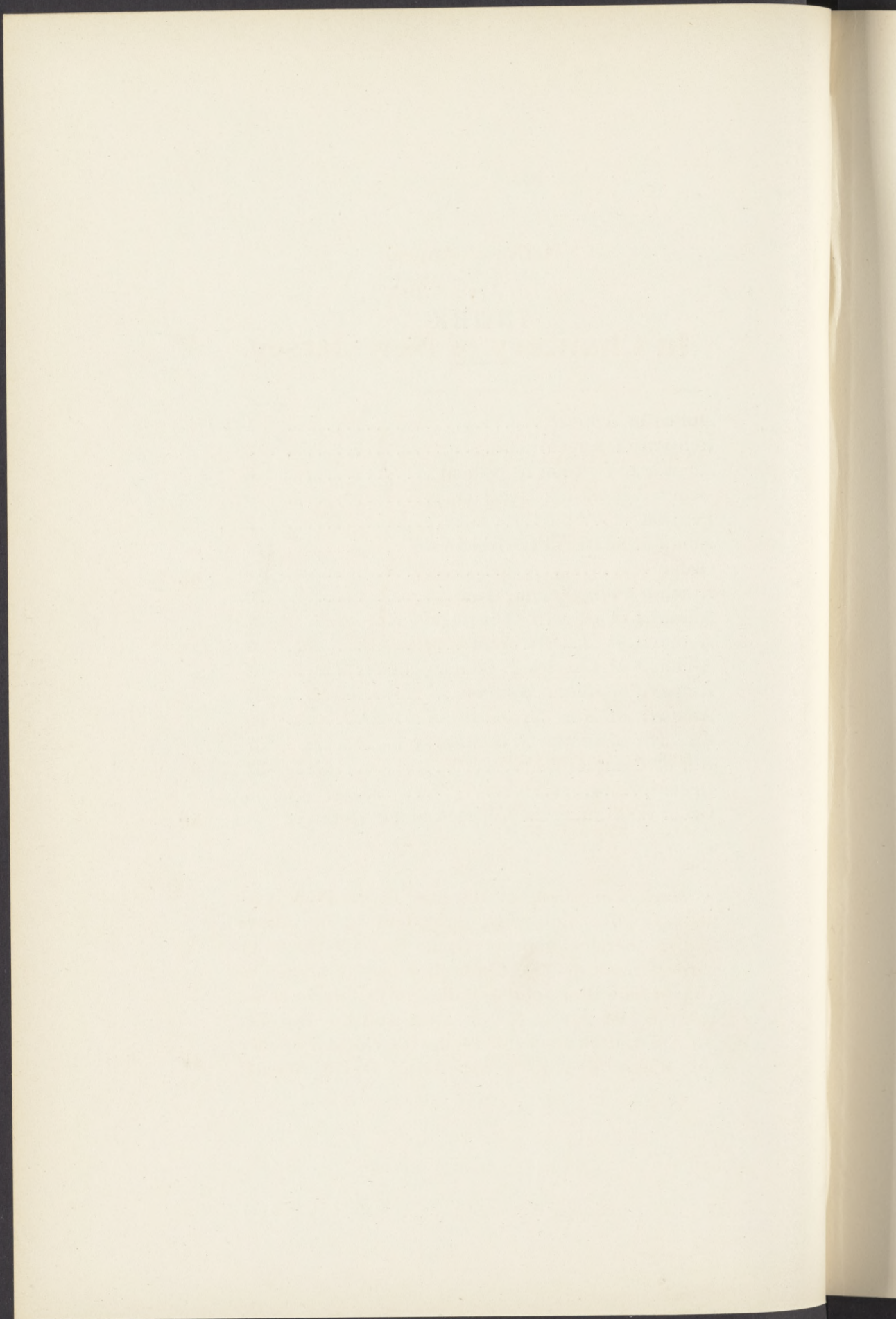


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**Notice of Appeal.**

(Filed April 8, 1930.)

**In Chancery of New Jersey** 10

Between

MORTGAGE SECURITY CORPORATION  
OF NEW JERSEY, a corporation,  
*Complainant,*

and

MARK TOWNSEND, JR., Receiver of  
PARK AVENUE HOLDING COM-  
PANY, *et als.,*

*Defendants.*

77-213.

On Bill, &c.

On Petition, &c.

20

To

JEROME C. EISENBERG, Esq.,  
Solicitor of Complainant,  
1080 Broad Street,  
Newark, N. J.

30

SIR:

Mark Townsend, Jr., Receiver of the Park Avenue Holding Company, defendant in the above cause, hereby appeals from two interlocutory orders made by the Chancellor on the advice of Vice-Chancellor John J. Fallon in the above cause on the 31st day of March, 1930, and the 2nd day of April, 1930, respectively, the interlocutory order of March 31st, 1930, appointing David Needell

40

*Notice of Appeal.*

Receiver to take charge of the mortgaged premises described in the bill of complaint in this cause, which mortgaged premises are located at No. 608 Park Avenue, West New York, New Jersey, to manage the same, with power to sue for, collect and receive the rents, issues and profits thereof, and enjoining the defendant, Mark Townsend, Jr., Receiver of the said Park Avenue Holding Company, from collecting or receiving all or any part of the rents, issues and profits of the premises thereafter becoming due, and restraining the tenants from paying their rents to the said defendant, Mark Townsend, Jr., Receiver of the said Park Avenue Holding Company; and the interlocutory order of April 2nd, 1930, refusing to vacate the aforesaid interlocutory order of March 31st, 1930, from the whole and every part of each of said interlocutory orders, to the Court of Errors and Appeals in the last resort in all cases.

MARK TOWNSEND, JR.,  
Solicitor and Counsel *pro se.*

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

MARK TOWNSEND, JR.,  
Solicitor and Counsel *pro se.*

Dated April 4th, 1930.

Service acknowledged this 5th day of April, 1930.

JEROME EISENBERG,  
Solicitor of Complainant.

## Petition of Appeal.

(Filed April 14, 1930.)

### NEW JERSEY COURT OF ERRORS AND APPEALS.

To The Honorable, The Court of Errors and Appeals in The Last Resort in All Causes: 10

The petition of Mark Townsend, Jr., Receiver of Park Avenue Holding Company, appellant herein, respectfully shows:

That your petitioner and appellant finds himself aggrieved by an interlocutory order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John J. Fallon, on the 31st day of March, 1930, in a certain cause wherein the Mortgage Security Corporation of New Jersey is complainant and Mark Townsend, Jr., Receiver of Park Avenue Holding Company, *et als.*, are defendants, in this respect, to wit: that the said interlocutory order appoints David Needell of the City of Newark, County of Essex, State of New Jersey, Receiver to take charge of the mortgaged premises described in the bill of complaint in said cause, which mortgaged premises are located at No. 608 Park Avenue, West New York, New Jersey, and to manage the same, with power to sue for, collect and receive the rents, issues and profits thereof, to let the said premises or any part at such time or times as may prove necessary or proper, and for that reason to make agreements or leases for the rental of said premises or any part thereof and to apply the rents, issues and profits to interest now due or to be due on the mortgage now a first lien on the premises in said bill of com- 20 30 40

*Petition of Appeal.*

10      plaint described, and to pay the interest now due  
and to be due on the mortgage now a second lien  
on the premises in said bill of complaint described,  
and to pay the interest now in arrears, and to be  
levied against the premises in said bill of com-  
plaint described, and otherwise, to do all things  
necessary and proper for the due care and proper  
management of said mortgaged premises; and  
further ordered that before entering upon his  
duties as such receiver, that the said David Needell  
enter into a bond to the Chancellor of the State of  
New Jersey for the faithful performance of his  
duties, in the sum of \$5,000.00 with sureties to be  
approved by one of the special masters of this  
Court, which said bond shall be filed with the  
20      Clerk of this court; and further Ordered that your  
petitioner and appellant as Receiver of the Park  
Avenue Holding Company be restrained and en-  
joined from collecting or receiving all or any part  
of the rents, issues and profits of said premises  
hereafter becoming due, and that the tenants of  
said premises be restrained and enjoined from  
paying to your petitioner and appellant, Receiver  
of Park Avenue Holding Company, or to any other  
30      person whatsoever, excepting the said David  
Needell, all or any part of said rents, which may  
hereafter become due; and further ordered that  
the tenants of the premises 608 Park Avenue, West  
New York, New Jersey, be enjoined and ordered  
to pay to the said receiver as aforesaid, all the  
rents, issues and profits of said premises which  
hereafter become due under the terms of their  
leases from your petitioner and appellant, Receiver  
of Park Avenue Holding Company.

40      And your petitioner and appellant humbly ap-  
peals from the whole of the said order of the

*Petition of Appeal.*

Chancellor which orders as aforesaid on the ground that the same is erroneous, for that:

1. By an order of the Chancellor, on the advice of the late Vice-Chancellor, John Bentley, under date of January 14th, 1930, the Park Avenue Holding Company was adjudged insolvent and your petitioner and appellant was appointed Receiver of the said Park Avenue Holding Company with all the rights, powers and duties imposed upon and required by law, especially by an act entitled "An Act Concerning Corporations (Revision of 1896)" and the acts supplementary thereto and amendatory thereof, which order further authorized and empowered your petitioner and appellant as Receiver until the further order of the court, to conduct and continue the business of the said Park Avenue Holding Company without interruption and generally to do all acts and things proper and necessary to be done to protect the property and rights for the benefit of creditors and stockholders; and your petitioner and appellant thereupon, on the same day, duly qualified as such Receiver and at the time of the making of the order appealed from was acting as such and was in possession of the mortgaged premises described in the bill of complaint in this cause, and therefore said court was without jurisdiction to appoint a rent Receiver.

2. By an order of the Chancellor, on the advice of the late Vice-Chancellor, John Bentley, under date of January 14th, 1930, the Park Avenue Holding Company was adjudged insolvent and your petitioner and appellant was appointed Receiver of the said Park Avenue Holding Company with all the rights, powers and duties imposed upon

*Petition of Appeal.*

and required by law, especially by an act entitled  
"An Act Concerning Corporations (Revision of  
1896)" and the acts supplementary thereto and  
amendatory thereof, which order further author-  
10     ized and empowered your petitioner and appel-  
   lant as Receiver, until the further order of the  
   court, to conduct and continue the business of the  
   said Park Avenue Holding Company without in-  
   terruption and generally to do all acts and things  
   proper and necessary to be done to protect the  
   property and rights for the benefit of the creditors  
   and stockholders; and your petitioner and appel-  
   lant thereupon, on the same day, duly qualified as  
   such Receiver and at the time of the making of  
20     the order appealed from was acting as such and  
   was in possession of the mortgaged premises de-  
   scribed in the bill of complaint in this cause, and  
   therefore the said order was an abuse of discre-  
   tion in that it needlessly and without warrant im-  
   posed upon the premises additional administra-  
   tion expenses of the rent Receiver, to the injury  
   of this petitioner and appellant and the general  
   creditors of the Park Avenue Holding Company.

3. Said mortgagee or its assigns were not in  
30     possession of the mortgaged premises at the time  
   of the making of the order aforesaid, hereby ap-  
   pealed from, but the premises were in possession  
   of your petitioner and appellant as Receiver of  
   the Park Avenue Holding Company.

4. Said order appointing the said David Need-  
   ell as rent Receiver and restraining your petitioner  
   and appellant from collecting or receiving any or  
   all the rents, issues and profits of the mortgaged  
40     premises, was a removal of your petitioner and  
   appellant as Receiver of the Park Avenue Holding

*Petition of Appeal.*

Company in a separate cause of action other than that in which he was appointed Receiver, and said court had no jurisdiction to remove your petitioner and appellant as Receiver of the Park Avenue Holding Company in a cause of action other than the one in which he was appointed. 10

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

MARK TOWNSEND, JR.,  
Solicitor and counsel *pro se.*

I conceive that there is good cause for an appeal. 20

MARK TOWNSEND, JR.,  
Solicitor and counsel *pro se.*

30

40

**Answer to Petition of Appeal.**

(Filed May 12, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

MORTGAGE SECURITY CORPORATION OF  
NEW JERSEY, a corporation,  
*Complainant-Respondent,*

*v.*

MARK TOWNSEND, JR., Receiver of  
PARK AVENUE HOLDING COMPANY,  
*et als.,*

*Defendants-Appellants.*

On Bill.

On Appeal from  
Court of  
Chancery.

20

The answer of Mortgage Security Corporation of New Jersey, a corporation, the above named respondent to the petition of appeal of Mark Townsend, Jr., Receiver of Park Avenue Holding Company, says that:

30

This respondent, 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 interlocutory order was, on the 31st day of March, 1930, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said interlocutory order, this respondent begs leave to refer thereto when the same shall be produced.

40

This respondent is advised and believes that the said interlocutory order is agreeable to equity;

*Order Appointing Receiver.*

and therefore prays that the same may be affirmed with costs to be taxed in favor of this respondent.

JEROME C. EISENBERG,  
Solicitor for and of Counsel with  
Complainant-Respondent, Mort-  
gage Security Corporation of New  
Jersey.

10

**Order Appointing Receiver.**

(Filed March 31, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

MORTGAGE SECURITY CORPORATION OF  
NEW JERSEY,  
*Complainant,*

and

MARK TOWNSEND, JR., Receiver of  
PARK AVENUE HOLDING COMPANY,  
*et als.,*

*Defendants.*

77-451.

On Bill, &c.

On Petition.

20

30

This matter being opened to the Court by Jerome C. Eisenberg, solicitor of the complainant, Mortgage Security Corporation of New Jersey, a corporation, and it appearing that service of the Order to Show Cause heretofore made in this matter on the 17th day of March, 1930 has been made on the persons therein named as in and by said order to show cause directed; and the Court hav-

40

*Order Appointing Receiver.*

of said complainant, and having read and considered the arguments of counsel, and being satisfied that the prayer of said petition should be granted;

10 It is, on this 31st day of March, 1930, ORDERED that David Needell, of the City of Newark, in the County of Essex and State of New Jersey, be and he is hereby appointed receiver, to take charge of the mortgaged premises mentioned in said petition and described in the bill of complaint filed herein, which mortgaged premises are located at No. 608 Park Avenue, West New York, New Jersey, and to manage the same with power to sue for, collect and receive the rents, issues and profits thereof; to let the said premises or any part at 20 such time or times as may prove necessary or proper, and for that purpose to make agreements or leases for the rental of said premises, or any part thereof, and to apply the rents, issues and profits thereof to interest now due and to be due on the mortgage now a first lien on the premises in said bill of complaint described, and to pay the interest now due and to be due on the mortgage now a second lien on premises in said bill 30 of complaint described, and to pay the taxes now in arrears and to be levied against the premises in said bill of complaint described and otherwise, to do all things necessary or proper for the due care and proper management of the said mortgaged premises.

40 It is further ORDERED, that before entering upon his duties as such receiver, that said receiver enter into a bond to the Chancellor of the State of New Jersey for the faithful performance of his duties, in the sum of \$5,000 with sureties to be approved

*Order Appointing Receiver.*

by one of the special masters of this Court, which said bond shall be filed with the Clerk of this Court.

It is further ORDERED that the said defendant, Mark Townsend, Jr., receiver of Park Avenue Holding Company, be and he hereby is restrained and enjoined from collecting or receiving all or any part of the rents, issues and profits of said premises hereafter becoming due, and that the tenants of said premises be and they are hereby restrained and enjoined from paying to the said Mark Townsend, Jr., receiver of Park Avenue Holding Company, or to any other person whatsoever, excepting the aforesaid receiver, all or any part of said rents, which may hereafter become due.

10

20

It is further ORDERED that the said tenants of the premises, 608 Park Avenue, West New York, New Jersey, be and they are hereby ordered and enjoined to pay to the said receiver as aforesaid, all the rents, issues and profits of said premises which may hereafter become due under the terms of their leases from said defendant, Mark Townsend, Jr., receiver of Park Avenue Holding Company.

30

It is further ORDERED that true but uncertified copies of this order be served on the said Mark Townsend, Jr., Receiver of Park Avenue Holding Company, and all the tenants of the premises lo-

40

*Petition.*

cated at No. 608 Park Avenue, West New York,  
New Jersey, within two days from the date hereof.

Respectfully advised,

E. R. WALKER,  
C.

10

JOHN F. FALLON,  
V. C.

I hereby certify this copy to be a true copy of the  
original on file.

JEROME C. EISENBERG,  
Solicitor for Complainant.

20

**Petition.**

(Filed March 17, 1930.)

IN CHANCERY OF NEW JERSEY.

Between  
MORTGAGE SECURITY CORPORATION OF  
NEW JERSEY, a corporation,  
*Complainant,*

30

and

MARK TOWNSEND, JR., Receiver of  
PARK AVENUE HOLDING COMPANY,  
*et als.,*  
*Defendants.*

77-213.  
On Bill, &c.

To the Honorable Edwin Robert Walker, Chan-  
cellor of the State of New Jersey:

40

The petition of MORTGAGE SECURITY CORPORATION  
OF NEW JERSEY, a corporation, having its principal

*Petition.*

office in the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. Petitioner is the complainant herein, and has heretofore filed its bill of complaint, the general object of which is to foreclose a certain mortgage made by the Park Avenue Holding Company, a corporation, on lands in said bill of complaint particularly described, which mortgage is held by petitioner.

10

2. The said mortgage was executed and delivered by said defendants to petitioner on October 5, 1928, to secure the sum of \$27,500 payable quarter-annually, at the rate of \$1,031.25 per quarter, and the balance of the unpaid principal sum to be paid on October 5, 1929, and the unpaid principal sum due on said mortgage is the sum of \$24,000.06.

20

3. The said mortgaged premises consist of a plot approximately 97 feet by 100 feet improved with a recently constructed four-story brick apartment building with stores on the ground floor.

Said premises are known as No. 608 Park Avenue, West New York, New Jersey.

4. The taxes on the said premises for the year of 1929 have not been paid, and are in arrears; and said taxes so in arrears amount to the sum of \$1,447.76, together with lawful interest thereon since the date when they became due, at the rate of 7% per annum. The said taxes are a lien upon said mortgaged premises.

30

5. Since the making of said mortgage by said defendant, it has neglected to make necessary repairs to said premises, and the said premises have

40

*Petition.*

greatly depreciated in value. The fair market value of said premises is \$155,500.

That the sums due on said mortgage, together with other liens upon said mortgaged premises, amount to more than \$155,500.

10

6. The said mortgaged premises are also encumbered by a prior mortgage made by Park Avenue Holding Company, a corporation, which mortgage is now held by New Jersey Title Guarantee and Trust Company, which mortgage is in the sum of \$125,000.

20

7. The said Park Avenue Holding Company, a corporation, and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company, failed and neglected to pay to said New Jersey Title Guarantee and Trust Company, the holder of a prior lien to the lien of the mortgage of your petitioner, the sum of \$3,750.00 for past due interest.

This complainant on February 27, 1930, paid to said New Jersey Title Guarantee & Trust Company, the said sum of \$3,750 in order to prevent foreclosure proceedings to be instituted by said Company.

30

8. The said sum of \$3,750 paid on the 27th day of February, 1930, together with interest on the said sum of six per centum per annum from and after the 27th day of February, 1930, is a lien on said premises, added to the amount of the mortgage debt owing to the petitioner.

40

9. The said mortgaged premises consist of a recently constructed four-story brick apartment building with stores on the ground floor, containing 108 rooms and 36 baths, four stores. 24 apartments and the four stores are occupied and yield

*Petition.*

a monthly income of \$1,575 per month. The said Park Avenue Holding Company, a corporation, and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company or one of them, their agents and/or servants have been collecting and still collects said rents, and have refused and still refuses to pay the same or any part thereof to petitioner, or to permit the petitioner to collect the same or any part thereof, for the purpose of applying whatever amounts petitioner might receive to the payment of the said mortgage debt, interest and taxes.

10

The said defendant Park Avenue Holding Company and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company, cannot be made to respond to any deficiency which may arise at the foreclosure sale.

20

Petitioner therefore prays that a receiver may be appointed to collect the rents, issues and profits of the said mortgaged premises, pending the termination of this suit, with all powers that may be necessary for that purpose and that said Park Avenue Holding Company and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company, be enjoined from collecting, and the tenants now occupying said mortgaged premises from paying to the said Park Avenue Holding Company and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company, or either of them, or to any other person except the said receiver, any or all of the rents, issues and profits of the said mortgaged premises, until the further order of this Court.

30

JEROME C. EISENBERG,  
Solicitor of Petitioner.

40

**Affidavit of David L. Greenwald.**

(Filed Mar. 31, 1930.)

IN CHANCERY OF NEW JERSEY.

10	Between MORTGAGE SECURITY CORPORATION OF NEW JERSEY, a corporation, <i>Complainant,</i>	} On Bill, &c. On Petition.
	and	
	MARK TOWNSEND, JR., Receiver of PARK AVENUE HOLDING COMPANY, <i>et als.,</i> <i>Defendants.</i>	
20		

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

David L. Greenwald, of full age, being duly sworn, according to law, upon his oath, deposes and says:

30 1. I am the Secretary of the Mortgage Security Corporation of New Jersey, a corporation, the petitioner in the foregoing petition, and I am familiar with the contents of the said petition and the matters and things therein contained are true.

40 2. Petitioner is the complainant herein, and has heretofore filed its bill of complaint, the general object of which is to foreclose a certain mortgage made by the Park Avenue Holding Company, a corporation, on lands and premises in the bill of complaint particularly described, which mortgage is held by petitioner.

*Affidavit of David L. Greenwald.*

3. The said mortgage was executed and delivered by said defendants to petitioner on October 5, 1928, to secure the sum of \$27,500 payable quarter-annually, at the rate of \$1,031.25 per quarter, and the balance of the unpaid principal sum to be paid on October 5, 1929, and the unpaid principal sum due on said mortgage is the sum of \$24,000.06.

10

4. The said mortgaged premises consist of a plot approximately 97 feet by 100 feet improved with a recently constructed four story brick apartment building with stores on the ground floor.

Said premises are known as No. 608 Park Avenue, West New York, New Jersey.

5. The taxes on the said premises for the year of 1929 have not been paid, and are in arrears; and said taxes so in arrears amount to the sum of \$1,447.76, together with lawful interest thereon since the date when they became due, at the rate of 7% per annum. The said taxes are a lien upon said mortgaged premises.

20

6. Since the making of said mortgage by said defendant, it has neglected to make necessary repairs to said premises, and the said premises have greatly depreciated in value. The fair market value of said premises is \$155,500.

30

That the sums due on said mortgage, together with other liens upon said mortgaged premises, amount to more than \$155,500.

7. The said mortgaged premises are also encumbered by a prior mortgage made by Park Avenue Holding Company, a corporation, which mortgage is now held by New Jersey Title Guarantee and Trust Company, which mortgage is in the sum of \$125,000.

40

*Affidavit of David L. Greenwald.*

8. The said Park Avenue Holding Company, a corporation and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company, failed and neglected to pay to said New Jersey Title Guarantee and Trust Company, the holder of a prior lien to the lien of the mortgage of your petitioner, the sum of \$3,750 for past due interest.

This complainant on February 27, 1930, paid to said New Jersey Title Guarantee & Trust Company, the said sum of \$3,750 in order to prevent foreclosure proceedings to be instituted by said Company.

9. The said sum of \$3,750 paid on the 27th day of February, 1930, together with interest on the said sum at six per centum per annum from and after the 27th day of February, 1930, is a lien on said premises, added to the amount of the mortgage debt owing to the petitioner.

10. The said mortgaged premises consist of a recently constructed four story brick apartment building with stores on the ground floor, containing 108 rooms and 36 baths, four stores, 24 apartments and the four stores are occupied and yield a monthly income of \$1,575 per month. The said Park Avenue Holding Company, a corporation and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company or one of them, their agents and/or servants have been collecting and still collects said rents, and have refused and still refuses to pay the same or any part thereof to petitioner or to permit the petitioner to collect the same or any part thereof, for the purpose of applying whatever amounts petitioner might receive to the payment of the said mortgage debt, interest and taxes.

*Order.*

The said defendant Park Avenue Holding Company and/or Mark Townsend, Jr., Receiver of Park Avenue Holding Company cannot be made to respond to any deficiency which may arise at the foreclosure sale.

DAVID L. GREENWALD. 10

Sworn and subscribed to before me }  
this 15th day of March, 1930. }

FRANCIS F. WELSH,  
An Attorney at Law of New Jersey.

**Order.**

(Filed February 10, 1930.) 20

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FINK,  
*Complainant,*

and

PARK AVENUE HOLDING COMPANY,  
a corporation of the State of  
New Jersey,

*Defendant.*

77-213.

On Bill, &c.

30

This matter being opened to the Court by Jerome C. Eisenberg, solicitor of the Mortgage Security Corporation of New Jersey, upon application by the said Company for leave to institute foreclosure proceedings against Park Avenue Holding Com-

40

*Amended Bill of Complaint.*

pany, and due notice of this application having been given to the Receiver of said Company, and good cause appearing for the entry of this order;

10 It is, on this 10th day of February, 1930, on motion of Jerome C. Eienberg, solicitor of the Mortgage Security Corporation of New Jersey, ORDERED, that the said Mortgage Security Corporation of New Jersey be and the same is hereby allowed to institute foreclosure proceedings against the Park Avenue Holding Company upon its mortgage, and to join said Mark Townsend Jr., Esq., receiver of said Park Avenue Holding Company, as party defendant in said suit.

20 Respectfully advised,

E. R. WALKER,  
C.

JOHN BENTLEY,  
V. C.

**Amended Bill of Complaint.**

(Filed March 7, 1930.)

30 IN CHANCERY OF NEW JERSEY,

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

The complainant, Mortgage Security Corporation of New Jersey, a corporation organized and existing in the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, for its amended bill of complaint, respectfully shows:

40 1. On the 5th day of October, 1928, Park Avenue Holding Company, a corporation, William

*Amended Bill of Complaint.*

Fink and William Walser, being indebted to the Mortgage Security Corporation of New Jersey, a corporation, in the sum of \$27,500, executed to said Mortgage Security Corporation of New Jersey, a corporation, a bond of that date to secure that sum, payable as follows:

10

\$1,031.25 on January 5, 1929,

1,031.25 on April 5, 1929,

1,031.25 on July 5, 1929, and the balance on October 5, 1929, together with interest thereon at the rate of six per centum per annum, computed from October 5, 1928, and quarter-annually thereafter.

2. To secure the payment of said bond, the said Park Avenue Holding Company, a corporation executed to said Mortgage Security Corporation of New Jersey, a corporation, a mortgage of even date with said bond and thereby conveyed to said Mortgage Security Corporation of New Jersey, a corporation, in fee, the lands and premises hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the aforesaid bond, which said mortgage, having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was on the 5th day of November, 1928, recorded in the Register's Office of Hudson County, in Book 1542 of Mortgages for said County on page 5.

20

30

3. The mortgaged premises are described as follows: Premises in the Town of West New York, County of Hudson and State of New Jersey:

BEGINNING at a point at the Southeasterly line of Park Avenue distant Southwesterly along the same 88.65 feet from the point of its intersection with

40

*Amended Bill of Complaint.*

the Southwesterly of 16th Street, which point of beginning is opposite the center line of two party walls, standing partly on the premises hereby described, and partly on the premises next adjoining Northeasterly thereto and from thence running Southeasterly in a straight line, to thru and beyond the center line of each of said party walls 83.75 feet to a point, distant 95.50 feet Southwesterly from said Southwesterly line of 16th Street measured along a line drawn parallel with said Southeasterly line of Park Avenue; thence Southwesterly parallel with said Southeasterly line of Park Avenue 90.15 feet to a point in the Southwesterly line of lands conveyed to William Walser by deed of John Dieckmann and others executors, dated May 1, 1924 and recorded in Book 1531 page 223; thence Northwesterly and along said Southwesterly line of lands so conveyed to William Walser, as aforesaid 84.03 feet to a point in said Southeasterly line of Park Avenue, and thence Northeasterly and along said Southeasterly line of Park Avenue 97 feet to BEGINNING.

4. On the 26th day of August, 1929, in the Hudson County Circuit Court, Bruno Dankert recovered a judgment against Park Avenue Holding Co. in the sum of \$4,964.84 damages and \$53.02 costs, which judgment was entered in Book 78 of Circuit Court Judgments on page 222, which judgment still remains uncanceled and unsatisfied of record.

Any interest which the said Bruno Dankert may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

5. On the 17th day of September, 1929, in the New Jersey Supreme Court, Louis L. Cronson, Assignee, recovered a judgment against Park Avenue

*Amended Bill of Complaint.*

Holding Co., a corporation, William Walser and William Fink in the sum of \$3,213.91 damages and \$65.02 costs, which judgment still remains uncanceled and unsatisfied of record.

Any interest which the said Louis L. Cronson, may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

10

6. On the 23rd day of September, 1929, in the Hudson County Circuit Court, the New Jersey Title Guarantee & Trust Co., a New Jersey corporation, recovered a judgment against Park Avenue Holding Co., William Fink and William Walser in the sum of \$5,937.35 damages and \$57.02 costs, which judgment was entered in Book 78 of Circuit Court Judgments on page 315, which judgment still remains uncanceled and unsatisfied of record.

20

Any interest which the New Jersey Title Guarantee & Trust Co., a New Jersey corporation, may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

7. On the 6th day of January, 1930, in the New Jersey Supreme Court, Scranton Coal Co., a corporation, recovered a judgment, by default, against Park Avenue Holding Co., a corporation, William Fink and William Walser in the sum of \$1,248.01 damages and \$62.02 costs, which judgment still remains uncanceled and unsatisfied of record.

30

Any interest which the said Scranton Coal Co., a corporation, may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

8. On January 14, 1930, the defendant Park Avenue Holding Co., was declared to be insolvent by this Honorable Court, and Mark Townsend, Jr.,

40

*Amended Bill of Complaint.*

was appointed receiver of said defendant Park Avenue Holding Co., and of all its assets and property of every character and description.

10 By an order of this Honorable Court dated February 10, 1930, this complainant was allowed to institute these proceedings against the defendant Park Avenue Holding Co., and to join said Mark Townsend, Jr., Receiver as aforesaid, as party defendant to this suit, a copy of which order is hereto annexed and made a part hereof by this reference.

Any interest which the said Mark Townsend, Jr., as such receiver, may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

20 9. On or about the 14th day of January, 1930, William Fink filed a bill in the Court of Chancery against the Park Avenue Holding Company, a corporation, praying that the said Park Avenue Holding Company, a corporation, be adjudged insolvent.

Any interest which the said William Fink may have in said lands and premises is subject and subordinate to the lien of complainant's mortgage.

30 10. The said Mark Townsend, Jr., receiver of the Park Avenue Holding Company, a corporation, failed and neglected to pay to The New Jersey Title Guarantee & Trust Company, a corporation, the holder of a prior lien to the lien of the mortgage of the complainant, the sum of \$3,750.00, for past due interest.

40 This complainant on February 27, 1930, paid to the said New Jersey Title Guarantee & Trust Company, a corporation, the said sum of \$3,750.00 in order to prevent foreclosure proceedings to be instituted by said company, which said sum together

*Amended Bill of Complaint.*

with interest at the rate of six per centum per annum, is a lien on said premises added to the amount of the mortgage.

11. The said Park Avenue Holding Company, a corporation, and/or Mark Townsend, Jr., receiver, or one of them have always been in possession of the mortgaged premises. 10

12. Both bond and mortgage contained an agreement that if any installment of interest or principal should remain unpaid for thirty days after the same should fall due, then the whole principal sum, with all unpaid interest thereon should, at the option of the mortgagee, its successors and/or assigns, become immediately due and payable. 20

13. The mortgage also contained an agreement that the mortgagor, its successors and assigns, would keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than the principal of the mortgage debt, and would assign the policy of insurance to the mortgagee, its mortgagee, its representatives or assigns; and in default of so doing that the mortgagee, its representatives or assigns, should be entitled to effect such insurance and the premiums paid for the same by the mortgagee, or its assigns, with interest at six per centum per annum, should be a lien on said land added to the amount of the mortgage debt. 30

14. Said Park Avenue Holding Co., and/or Mark Townsend, Jr., Receiver, failed to keep the buildings on said land insured against loss or damage by fire in any sum; and on November 8, 1929, complainant caused the same to be insured in the 40

*Amended Bill of Complaint.*

Jefferson Fire Insurance Company in the sum of \$27,500 for one year, and paid the sum of \$299.75 for insurance premium thereon; which sum, with interest at the rate of six per centum per annum from February 18, 1930, is a lien on said premises added to the amount of the mortgage debt.

15. On the 5th day of October, 1929, the balance of the principal sum of complainant's mortgage remaining unpaid, was due and payable, but said sum was not paid on such date, nor for thirty days thereafter, and has not been paid to date.

16. There is due on account of complainant's bond and mortgage above mentioned, the sum of \$24,000.06, together with interest thereon from October 5, 1929, together with the amounts advanced as herein alleged with interest from the date of said advances.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That Mark Townsend, Jr., Receiver of Park Avenue Holding Company, a corporation, William Fink, William Walser, Bruno Dankert, Louis L. Cronson, The New Jersey Title Guarantee & Trust Company, a corporation, Scranton Coal Co., a corporation, who are the defendants to this suit, may answer this amended bill of complaint and each statement therein made.

2. That an account may be taken of the amount due on the complainant's mortgage.

3. That the defendants, as aforesaid, or one of them, may be decreed to pay the complainant the amount so found due with interest and costs, by a short day, to be appointed by this Court, and that in default of such payment they and each of them

*Affidavit of David L. Greenwald.*

be debarred and foreclosed of all equity of redemption in said lands; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on this mortgage with interest and costs; 10

5. That a writ of subpoena may issue commanding the said defendants to answer this amended bill of complaint, and to abide by such decree as this Court may make in the premises.

JEROME C. EISENBERG,  
Solicitor for and of Counsel  
with Complainant.

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**Affidavit of David L. Greenwald.**

(Filed March 31, 1930.)

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

DAVID L. GREENWALD, of full age, being duly sworn according to law, upon his oath, deposes and says that:

30

1. I am the Secretary of the Mortgage Security Corporation of New Jersey, the complainant in the above entitled action and I am familiar with all matters under foreclosure, and particularly the one involving the Park Avenue Holding Company matter and I am duly authorized to make this affidavit.

2. On or about February 27, 1930, I delivered a check to the New Jersey Title Guaranty and Trust Company, a corporation, which holds a first mortgage on premises known as 602-4-6-8

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*Affidavit of David L. Greenwald.*

Park Avenue, West New York, N. J., in the sum of \$3,750, paying the interest on the first mortgage in arrears up to February 1, 1930, in order to prevent the said New Jersey Title Guaranty and Trust Company from instituting foreclosure proceedings.

10 3. On March 27, 1930, I forwarded a certified check in payment of the first half of 1929 taxes on the above-mentioned property to the New Jersey Title Guaranty and Trust Company, to hold said check in escrow until the completion of our foreclosure proceedings. This check was sent certified and was deposited in escrow so as to avoid the necessity of amending our foreclosure bill.

20 As soon as we become the owners of the property at the Sheriff's sale, check will be used in payment of the taxes.

4. The amount of money now due and owing on the first mortgage held by the said New Jersey Title Guaranty and Trust Company is in the sum of \$125,000.00, with interest thereon from February 1, 1930. The amount of money due on the encumbrance held by the Mortgage Security Corporation of New Jersey, is in the sum of \$24,000.06,

30 together with interest from October 5, 1929, together with the amounts advanced by us under our mortgage, which include \$299.75 for insurance premiums, with interest on said sum from the date it was advanced; together with the sum of \$3,750, which was paid to the New Jersey Title Guaranty and Trust Company, together with interest on said sum from the date it was advanced. The mortgage held by us became due, by its terms,

40 on October 5, 1929.

5. Since October 5, 1929, I had negotiations with

*Affidavit of David L. Greenwald.*

Mr. William Walser, secretary of the Park Avenue Holding Company, with reference to the renewal of our mortgage for one year and these negotiations were pending on or about January 11, 1930, due to delays caused by the said Mr. Walser. On January 11, 1930, I informed the said Mr. Walser that if an extension agreement was not executed immediately, foreclosure would be instituted for the collection of our mortgage. At that time, Mr. Walser told me to hold up the papers and not to turn the mortgage over for foreclosure, because Mr. Fink had pneumonia and was then confined at home with such illness and could not therefore sign any such papers and that, as soon as Mr. Fink recovered, they would be more than willing to execute the extension agreement. Out of consideration for the illness of Mr. Fink, I delayed negotiations for another week. About five days later, I received an order to show cause in the case of *William Fink v. Park Avenue Holding Company*, wherein I was apprised of the appointment of Mark Townsend, Jr., as receiver of the Park Avenue Holding Company, which was made on January 14, 1930.

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20

DAVID L. GREENWALD.

30

Sworn and subscribed to before me }  
 this 31st day of March, 1930. }

FRANCIS F. WELSH,  
 An Attorney at Law of New Jersey.

40

### Affidavit of Max Bernfeld.

(Filed March 31, 1930.)

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

10       MAX BERNFELD, of full age, being duly sworn  
 according to law, upon his oath, deposes and says:

1. I am a real estate broker, duly licensed under the laws of the State of New Jersey, and I am connected with and President of Max Bernfeld, Inc., realtors having offices at 400—38th Street, Union City, New Jersey.

20       2. I have been actually and actively engaged  
 in the real estate business, both as broker, appraiser and a buyer and seller of real estate for the past fourteen years, and I am familiar with real estate values in that section of the County.

30       3. I have been called upon by the Mortgage Security Corporation to examine the property at 602-608 Park Avenue, West New York, N. J. I find that the property consists of a five-story brick apartment house, containing thirty-six three-room apartments, four stores and superintendent's apartment. The land comprises a plot of ground ninety-seven (97) feet in width by eighty-four (84) feet in depth. This apartment is what is termed as a walk-up building and at the present time there are some apartments and one store vacant in the said building. There is a total of one hundred and eight rooms in the entire building.

40       4. The aggregate monthly rental of Twenty-two hundred eighty (\$2,280.00) dollars, when the

*Affidavit of Max Bernfeld.*

building is entirely occupied and this is based upon an average rental per room of Seventeen dollars and ninety-five (\$17.95) cents per month. The building is equipped with a steam heating plant in which there is an adequate amount of heating capacity.

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5. From all computations I find that the property at the present market value is worth One hundred forty thousand (\$140,000.00) dollars, and that the said property at a forced sale would not bring more than One hundred thirty thousand (\$130,000.00) dollars. Under advantageous circumstances in an active market and between a ready buyer and ready seller, the premises might bring One hundred forty thousand (\$140,000.00) dollars, but a forced sale, it would not bring more than One hundred thirty thousand (\$130,000.00) dollars.

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MAX BERNFELD.

Sworn and subscribed to before me }  
 this 19th day of March, 1930. }

PETER A. MANNARA,  
 Notary Public of New Jersey.

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**Affidavit of Charles T. Shakarjian.**

(Filed March 31, 1930.)

IN CHANCERY OF NEW JERSEY.

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Between

MORTGAGE SECURITY CORPORATION  
OF NEW JERSEY,*Complainant,*

and

MARK TOWNSEND, JR., Receiver of  
PARK AVENUE HOLDING COM-  
PANY, *et al.*,*Defendants.*On Bill, &c.  
On Petition

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

CHARLES T. SHAKARJIAN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

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1. I am a real estate broker, duly licensed under laws of the State of New Jersey, and I am connected with and am President of Shakarjian Realty Corporation, realtors having offices at 524 Bergenline Avenue, Union City, New Jersey.

2. I have been actually and actively engaged in the real estate business, both as broker, appraiser and a buyer, and seller of real estate for the past eight years, and I am familiar with real estate values in that section of the County.

40

3. I have been called upon by the Mortgage

*Affidavit of Charles T. Shakarjian.*

Security Corporation to examine the property at 602-608 Park Avenue, West New York, N. J. I find that the property consists of a five-story brick apartment house, containing thirty-six three room apartments, four stores and superintendent's apartment. The land comprises a plot of ground ninety-seven (97) feet in width and eighty-four (84) feet in depth. This apartment is what is termed as a walk up building and at the present time there are some apartments and one store vacant in said building. There is a total of one hundred and eight rooms in the entire building. 10

4. The aggregate monthly rental of twenty-two hundred eighty (\$2,280.00) dollars, when the building is entirely occupied and this is based upon an average rental per room of Seventeen dollars and ninety-five (\$17.95) cents per month. The building is equipped with a steam heating plant in which there is an adequate amount of heating capacity and all modern improvements. 20

5. From all computations I find that the property at the present market value, is worth not more than One hundred thirty-five thousand (\$135,000.00) dollars. 30

CHARLES T. SHAKARJIAN.

Sworn and Subscribed to before me }  
this 29th day of March, 1930. }

MORRIS YOUTH,  
An Attorney at Law of N. J.

A True Copy.

FERD GARRETSON,  
Clerk. 40

**Affidavit of John A. Linnett.**  
 IN CHANCERY OF NEW JERSEY.

Between

MORTGAGE SECURITY CORPORATION  
 OF NEW JERSEY,

*Complainant,*

and

MARK TOWNSEND, JR., Receiver of  
 PARK AVENUE HOLDING COM-  
 PANY, *et al.*,

*Defendants.*

On Bill, &c.

On Petition

10

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

JOHN A. LINNETT, being duly sworn, according to law, upon his oath, deposes and says:

1. That I am a member of the firm of Linnett & Wolf, Inc. realtors who have been in business for the last twenty years in Newark, N. J.

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2. I have made an inspection of the property known as #608 Park Avenue, West New York, N. J.

3. This property consists of a plot approximately 97 feet by 100 feet, improved with a recently constructed four story brick apartment building with stores on the ground floor.

4. At the present time, it is slightly out of the business area and difficulty has been experienced in renting the stores under satisfactory conditions. The apartments are well planned and with the

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*Affidavit of Max Bernfeld.*

contemplated improvements in this section there should be an increased rental return.

5. I would appraise this property, taking land and building as a unit, at a forced sale at \$132,175.

JOHN A. LINNETT. 10

Sworn and subscribed to before me }  
this 29th day of March, 1930. }

(L. S.) BEATRICE FOX,  
Com. Exp. 1933.

**Affidavit of Max Bernfeld.**

State of New Jersey, }  
County of Hudson, } ss.: 20

MAX BERNFELD, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am a real estate broker, duly licensed under the laws of the State of New Jersey, and I am connected with and President of Max Bernfeld, Inc. realtors having offices at 400 38th Street, Union City, New Jersey.

2. I have been actually and actively engaged in the real estate business, both as broker, appraiser and a buyer, and seller of real estate for the past fourteen years and I am familiar with real estate values in that section of the County. 30

3. I have been called upon by the Mortgage Security Corporation to examine the property at 602-608 Park Avenue, West New York, N. J. I find that the property consists of a five-story brick apartment house, containing thirty-six three room apartments, four stores and superintendent's apart- 40

*Affidavit of Max Bernfeld.*

ment. The land comprises a plot of ground ninety-seven (97) feet in width by eighty-four (84) feet in depth. This apartment is what is termed as a walk-up building and at the present time there are some apartments and one store vacant in the said building. There is a total of one hundred and eight rooms in the entire building.

10

4. The aggregate monthly rental of twenty-two hundred eighty (\$2,280.00) dollars, when the building is entirely occupied and this is based upon an average rental per room of Seventeen dollars and ninety-five (\$17.95) cents per month. The building is equipped with a steam heating plant in which there is an adequate amount of heating capacity.

20

5. From all computations I find that the property at the present market value is worth (\$140,000) One hundred forty thousand dollars, and that the said property at a forced sale would not bring more than one hundred thirty thousand (\$130,000.00) dollars. Under advantageous circumstances in an active market and between a ready buyer and ready seller, the premises might bring One hundred forty thousand (\$140,000.00) dollars, but a forced sale, it would not bring more than One hundred thirty thousand (\$130,000) dollars.

30

MAX BERNFELD L.S.

Sworn and Subscribed to before me }  
 this 19th day of March, 1930. }

PETER A. MAUNARA,  
 Notary Public of New Jersey.

A True Copy.

40

FERD GARRETSON,  
 Clerk.

**Affidavit of Aladar J. S. Makray.**

(Filed April 2, 1930.)

APPRAISAL

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

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ALADAR J. S. MAKRAY, being duly sworn, deposes and says that he is a Real Estate Appraiser doing business under the name of A. Makray, Inc., and having an office at 921 Bergen Avenue, Jersey City, New Jersey; that deponent has been in the Real Estate business for upwards of twenty-two years last past and has managed, bought, sold, exchanged, appraised and otherwise dealt in Real Estate in Hudson County, New Jersey and vicinity and particularly in the vicinity of the property hereinafter described by reason whereof deponent is thoroughly familiar with the details of Real Estate situate in West New York, New Jersey.

20

That at the request of Mr. Mark Townsend, Jr., deponent has inspected premises known as #608 Park Avenue, West New York, New Jersey, and finds it to be a five-story brick apartment house containing thirty-six (36) three-room apartments and four (4) stores, of which five (5) apartments and two (2) stores are at present vacant. The total annual rental expectancy is approximately Twenty-five thousand dollars (\$25,000.00).

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In the opinion of the deponent, under present day conditions the market value of the above prop-

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*Bill of Complaint.*

erty as of March 31st, 1930, is One Hundred and Fifty Thousand Dollars (\$150,000.00).

ALADAR J. S. MAKRAY,  
Appraiser.

10 Subscribed and sworn to before me }  
this 31st day of March, 1930. }

ALICE A. KAPAKJIAN,  
Commissioner of Deeds  
of New Jersey.

**Bill of Complaint.**

(Filed January 14, 1930.)

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## IN CHANCERY OF NEW JERSEY.

To His Honor EDWIN ROBERT WALKER, Chancellor  
of the State of New Jersey:

The complainant, William Fink, a resident of the Town of West New York, County of Hudson and State of New Jersey, respectfully shows:

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1. The complainant is a creditor and stockholder of the Park Avenue Holding Company, a corporation of the State of New Jersey, and makes this bill of complaint for and on behalf of himself and all other creditors of said company, and stockholders thereof, who shall come in and contribute to the expense of this suit.

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2. That complainant is a creditor of the said Park Avenue Holding Company to the extent of fifteen thousand dollars (\$15,000), representing moneys loaned to said company, which said sum with interest thereon, is justly due and owing to your complainant from the said company.

*Bill of Complaint.*

3. That complainant is also a stockholder of said company, and is the owner and holder of one hundred seventy-five (175) shares of the common stock thereof.

4. That said company is a corporation created and existing under and by virtue of the laws of the State of New Jersey, and was incorporated in June, 1927, under and pursuant to the terms and provisions of an act of the Legislature of the State of New Jersey entitled "An act concerning corporations" (Revision of 1896) approved April 21st, 1896, and the several acts amendatory thereof and supplemental thereto. 10

5. The total authorized capital stock of the company is twenty-five hundred (2500) shares of no par value. That there is outstanding at the present time as your complainant is informed and believes and so states the facts to be one hundred seventy-five (175) shares of said no par value common stock. 20

6. The objects for which the corporation is organized are to engage in the general business of contracting and erecting buildings and structures with all improvements, and to deal in the various materials necessary thereto, and to buy, sell, exchange, etc., the lands and buildings that may be erected thereon. 30

7. That after the organization of said company it purchased certain real estate, to wit, #608 Park Avenue, in the Town of West New York, County of Hudson and State of New Jersey, and erected thereon a certain apartment house, containing thirty-six (36) apartments, and four (4) stores; the said building cost in the neighborhood of two 40

*Bill of Complaint.*

hundred thousand dollars (\$200,000), which building is the only asset owned or controlled by said company.

10 8. That there has upon said building a first mortgage held by the New Jersey Title Guarantee & Trust Company of Jersey City, in the amount of one hundred twenty-five thousand dollars (\$125,000), and a second mortgage by the Mortgage Security Corporation of Newark, New Jersey, in the sum of twenty-four thousand dollars (\$24,000); that in addition to the moneys owing to your complainant in the amount of fifteen thousand dollars (\$15,000) there is also due taxes to the Town of West New York, in the sum of fourteen hundred  
20 dollars (\$1,400), and to a certain other creditor which reduced said claim to judgment, in the amount of approximately five thousand dollars (\$5,000); in addition thereto, there is also due to the holders of said mortgage interest thereon, and the said mortgage of the Mortgage Security Corporation is now past due.

30 9. That owing to the present condition of the real estate market it has proved impossible for the said company to refinance the second mortgage on its property, or to realize on its assets sufficient cash to pay its other obligations, and it has no money or cash assets whatsoever wherewith to meet its current obligations, and that it has exhausted all its means of raising funds wherewith to carry on its business.

40 10. That the assets of said company are subject not only to judgments and executions in suits brought against the company by its creditors but also subject to action by the holders of its mortgages, and that unless the assets of the corpora-

*Bill of Complaint.*

tion are properly marshalled by a receiver or receivers to be appointed for the said corporation the said corporation will be subject to vexatious or costly litigation, and in the event of forced sales will bring very much less than their fair and reasonable values, all of which will be of great detriment to your complainant and the stockholders and other creditors of said corporation, and your complainant verily believes that unless this court in view of the inability of said corporation to meet its due and maturing obligations, will deal with its property as a single trust fund, its property will be dissipated to such an extent that its stockholders will realize little or nothing from the holding of its stock, and that in all probability the creditors of said corporation will be unable to collect their claims or any substantial part thereof against said corporation, and that the intervention of this court is necessary to the protection of said stockholders and creditors of said company, to the end that its property may not be dissipated by a multiplicity of suits to the detriment of the great body of creditors and stockholders thereof.

10. Complainant is without a remedy at law and therefore prays: 30

1. That Park Avenue Holding Company, the defendant herein, may be required to answer this bill and complaint and each and every allegation herein.

2. That an order or decree may be entered adjudging the said defendant insolvent, and appointing a receiver to take into his possession the assets of said defendant. 40

3. That the defendant may be enjoined from exercising on his franchises.

*Bill of Complaint.*

4. That a writ of subpoena may issue directed to said defendant requiring it to answer this bill of complaint and each and every allegation herein.

INSLEY, VREELAND & DECKER,  
Solicitors and of Counsel with  
Complainant.

10

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

20

WILLIAM FINK, being duly sworn according to law, on his oath deposes and says that he is the complainant named in the foregoing bill of complaint; that he has read the same and knows the contents thereof, and that the same is true to the best of his knowledge and belief;

30

Deponent further says: I am the President of the Park Avenue Holding Company, a corporation organized in June, 1907, having an authorized capital stock of 2,500 shares of common stock having no par value, of which 175 shares were issued, and of which I am the holder of 175 shares; I am also a creditor of said company in the amount of \$15,000 with interest thereon representing money advanced to said company, that said company was formed for the purpose of dealing in real estate and various materials to be used in the erection of buildings; for the erection of buildings and the sale, purchase and exchange of same; the company is also indebted to me in the event of my having to pay certain notes which I endorsed for its account; the company purchased the land at No. 608 Park Avenue in the Township of West New York in the County of Hudson and State of New Jersey and erected thereon a thirty-

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*Bill of Complaint.*

six (36) apartment building with four (4) stores on the ground floor at a cost of approximately \$200,000; there are upon said premises two mortgages, one for \$125,000 held by the New Jersey Title Guarantee & Trust Company of Jersey City, and the other for \$24,000 held by the Mortgage Security Corporation of Newark, New Jersey; that in addition to the \$15,000 which the company owes to me, it is indebted by a judgment for \$5,000, and owes the sum of \$1,400 in back taxes; I know, of my own knowledge, that the company is without funds and owing to the real estate depression is unable to finance a new second mortgage at this time, and that the present second mortgage is past due; I feel that it is necessary in order to preserve the assets of the company for the benefit of the creditors and stockholders that a receiver or receivers be appointed for it.

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WILLIAM FINK.

Sworn and subscribed to before me }  
 this 10th day of January, 1930. }

FLORENCE I. NICHOLS,  
 (Seal) Notary Public of New Jersey.

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**Order.**

(Filed January 14, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between

WILLIAM FINK,  
*Complainant,*

and

PARK AVENUE HOLDING COMPANY,  
*Defendant.*

} On Bill, &c.

20 This matter being opened to the court by Messrs. Insley, Vreeland & Decker of counsel with the complainant in the above-entitled cause, and upon the consent of the defendant, and it appearing to the court that the said defendant is unable to meet its current obligations or to continue its business with safety to the public or advantage to its stockholders, and that receivers for the defendant company should be appointed by this court to take charge of and administer all of its assets and property:

30 It is thereupon on this 14th day of January, 1930, ORDERED, ADJUDGED and DECREED as follows:

1. That Mark Townsend in the State of New Jersey be and he hereby is appointed receiver of the said defendant Park Avenue Holding Company, and of all its assets and property of every character and description wheresoever situate, with full power and authority to demand, sue for, collect and receive, and take into their possession

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*Order.*

all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said defendant company Park Avenue Holding Company, or to which it may be entitled, and to sell, convey and assign any or all of the real and personal estate of the said corporation, and to do and perform all the duties imposed upon them and required by law and especially by an act entitled "An act concerning corporations (Revision of 1896)," and the acts supplementary thereto and amendatory thereof. 10

2. And it is further ORDERED that the said receiver, before entering upon the discharge of his duties, shall take the oath of office described by law, and shall also enter into bond to the Chancellor of the State of New Jersey, with one or more surety or sureties, in the penal sum of \$2,500.00 dollars conditions for the faithful performance of his duties, which said bond shall be approved as to the form and security thereof by Charles E. Hendrickson one of the Special Masters of this court. 20

3. And it is further ORDERED that the said receiver shall take possession of all the property and assets of the said defendant corporation and account for the same as this court shall hereafter direct, and that the said defendant corporation, its officers, directors and agents, shall forthwith assign, transfer, convey and deliver to the said receiver all of the property and assets of the said corporation, both real and personal, wheresoever situated and of whatsoever it may consist. 30

4. And it is further ORDERED that the said de- 40

*Order.*

10        defendant corporation, its officers and agents, 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 cor-  
poration, 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        5. And it is further ORDERED that the said re-  
ceiver be, and he hereby is, authorized and em-  
powered, until the further order of this court, to  
conduct and to continue to conduct, the business  
of the said defendant corporation without inter-  
ruption, and fulfill the contracts (other than in-  
debtedness of the said defendant) made by the  
said defendant until further order in the premises,  
and to purchase and pay out of the income and  
profits of money, assets and effects, from time to  
time, coming into his hands as such receiver for  
the necessary supplies for the purposes aforesaid,  
and to collect and pay all needful agents and ser-  
vants, and generally to do all acts and things  
30        proper or necessary to be done to protect the  
property and rights of which they are hereby ap-  
pointed receivers for the benefit of the creditors  
and stockholders of the said company, with leave  
to apply, from time to time, whenever necessary,  
and as they may be advised for instruction touch-  
ing all and singular their rights, duties and liabil-  
ities in the premises.

40        6. And it is further ORDERED that the creditors  
and stockholders of the said company shall show

*Order.*

cause before the Chancellor, at the Chancery Chambers, in the city of Jersey City on Monday the 20th day of January, 1930, at 10 o'clock in the forenoon, why the appointment of the said receiver should not be continued.

7. And it is further ORDERED that the said receiver shall, within one day from the date hereof, mail to each of the creditors and stockholders of the said defendant corporation, at his last known post office address, a copy of this order.

Respectfully advised,

E. R. WALKER,  
C.

JOHN BENTLEY,  
V. C.

Filed January 14, 1930.

J. B.,  
V. C.

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**Order Continuing the Appointment of  
Receiver.**

(Filed January 20, 1930.)

IN CHANCERY OF NEW JERSEY.

10

WILLIAM FINK,  
*Complainant,*

*v.*

PARK AVENUE HOLDING COMPANY,  
a corporation of the State of  
New Jersey,

*Defendant.*

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This matter being opened to the court by Insley, Vreeland & Decker, Solicitors for and of counsel with the above named claimant, and an order having been entered in this cause on the 14th day of January, 1930, wherein, among other things, the creditors and stockholders of the defendant corporation were ordered to show cause before this court on Monday, the 20th day of January, 1930, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at Chancery Chambers, in the City of Jersey City, why Mark Townsend, Jr., the receiver heretofore appointed in this cause should not be continued as receiver, or why some other person or persons should not be appointed receiver or receivers in his place or with him; and proof of the mailing of a copy of said order to the creditors and stockholders of said corporation as required in said order having been presented to the court, and duly filed; and no cause being shown to the contrary;

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*Order Continuing Appointment of Receiver.*

It is on this 20th day of January, 1930, ORDERED that Mark Townsend, Jr., be and he hereby is continued as receiver of "Park Avenue Holding Company," a corporation organized under the laws of the State of New Jersey, the defendant in the above suit with all the powers and authorities incident thereto, and conferred upon him by the order heretofore made on the 14th day of January, 1930, and established by the Act of the Legislature of the State of New Jersey entitled "An act concerning corporations (Revision of 1896)" and the supplements thereto and amendments thereof.

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Respectfully advised,

E. R. WALKER,

C.

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JOHN BENTLEY,

V. C.

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## New Jersey Court of Errors and Appeals

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MORTGAGE SECURITY CORPORATION of New  
Jersey, a corporation,  
*Complainant-Respondent,*

*v.*

MARK TOWNSEND, JR., Receiver of Park  
Avenue Holding Company, *et als.*,  
*Defendants,*

MARK TOWNSEND, JR., Receiver,  
*Appellant.*

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On Appeal from  
Court of  
Chancery.

Sat Below: HON. EDWIN ROBERT WALKER,  
*Chancellor,*  
HON. JOHN J. FALLON, *Vice-*  
*Chancellor.*

### BRIEF OF COMPLAINANT-RESPONDENT.

#### Statement.

The respondent desires to state a few facts in addition to those stated in the appellant's brief:

The respondent is the holder of a bond of the Park Avenue Holding Company, for a debt of \$27,500 owed by the said company to the respondent. To secure the payment of said bond, the said Park Avenue Holding Company executed and delivered a second mortgage to the respondent, on certain lands and premises in the Town of West New York, New Jersey, commonly known as 608 Park Avenue, West New York, N. J. (State of Case, p. 20, *et seq.*).

The property was already and still is encumbered by a first mortgage in the sum of \$125,000 held by the New Jersey Title Guaranty and Trust Company (State of Case, p. 17, Paragraph No. 7). The bond, held by the respondent, provided that the debt should be paid in full on October 5, 1929 (State of Case, p. 21). Thereafter, the debt not having been paid, the complainant filed its amended bill of complaint in the Court of Chancery praying, among other things, for the foreclosure of its mortgage lien (State of Case, p. 20).

Prior to the filing of said bill of complaint, the appellant had been appointed receiver of the Park Avenue Holding Company, under a bill of complaint filed in the Court of Chancery, on behalf of a stockholder (State of Case, p. 48). The only asset of the defendant company was the real estate encumbered by the respondent's mortgage. The respondent obtained leave of the Court of Chancery to institute foreclosure proceedings against the Park Avenue Holding Company, and to join, as a party defendant therein, the receiver of said company (State of Case, pp. 19-20). During the course of the foreclosure, the respondent filed a petition, duly verified, praying for the appointment of a rent receiver, and alleged in said petition that the fair market value of the property was not more than \$155,000, and that the total liens, encumbrances and unpaid taxes thereon amounted to more than \$155,000 (State of Case, pp. 12 to 19, inclusive).

On the argument as to why a rent receiver should not be appointed, the respondent produced three affidavits, all of which were made by real estate brokers, one of whom has been actively engaged in the real estate business as broker, appraiser and a buyer and seller of real estate for

the past fourteen years, another who has been in the business for the past eight years, and still another who has been in the business for the last twenty years (State of Case, pp. 30 to 35, inclusive). The affidavits of such real estate agents and appraisers show that the value of the property, at the time of argument before the Vice-Chancellor in the Court below, was no more than about \$135,000.

The appellant produced the affidavit of a real estate man to show that the property was worth, at that time, \$150,000 (State of Case, p. 27).

After such argument, the Chancellor, on the advice of Vice-Chancellor FALLON, appointed a receiver to collect the rents, issues and profits of the property under foreclosure (State of Case, pp. 9 to 12, inclusive).

It is this order which the statutory receiver of the defendant corporation seeks to reverse.

### POINT I.

**The appellant, receiver of an insolvent corporation, should not prosecute an appeal from an order of the Court below made concerning the relative rights of the parties to the suit, without the consent of the Court of his appointment.**

Before any argument is directed to show that the Court below acted properly and legally in making the order complained of, the propriety of this appeal by a receiver of an insolvent corporation is questioned.

In *Seidler v. Branford Restaurant*, 97 N. J. Eq. 531, this Honorable Court said:

“The receiver represents the Court and acts for the interest of all concerned.”

The Court further said, at page 535, that:

“Receivers are but the arms of Chancery, appointed to preserve the property of corporations and similar entities for the benefit of all parties in interest, and in cases of insolvency to administer the estate under the direction of the Court. In theory of law, at least, a receiver has no part in his own selection, but stands as the representative of the Court impartially between the parties.”

To the same effect is *Clark on Receivers*, Second Edition, Volume I, page 1001, Section 691:

“The receiver acts for the Court. He is the hand of the Court.”

This Court has recently held, in the case of *Crown v. Regna Construction Co.*, 106 N. J. Eq. 192, that an appeal by a receiver places him

“in the position of taking sides, against the findings of the court by which he was appointed and under the direction of which he acts, for certain parties to the insolvency proceedings and against certain other parties; and this, we conceive, *he is not permitted to do without the permission of that court.*”

In *Crown v. Regna Construction Co.*, *supra*, Mr. Justice CASE, speaking for this Court, cites the opinion of Mr. Justice BREWER in *Bosworth v. Terminal Railroad Association of St. Louis*, 174 U. S. 182, 43 Law Ed. 941, in which was said:

“Neither can he (the receiver) question any subsequent order or decree of the Court distributing the estate in his hands between parties to the suit. *It is nothing to him whether all of the property is given to the mortgagee or all returned to the mortgagor.* He is to stand indifferent between the parties, and may not be heard either in the court as to the rightfulness of any order of distribution, between the parties.”

To the same effect is *United States Fidelity & Guaranty Co. v. United Steel Construction Co.*, 106 N. J. Eq. 232, also recently decided by this Court.

It was early held, in this State:

“A refusal by the Chancellor to appoint a receiver or the removal of a receiver when appointed, is not the subject matter of appeal,”

using the language of Chief Justice GREEN, speaking for this Court in *Garr v. Hill*, 5 N. J. Eq. 639.

It was held in the case of *McKinnon v. Wolfenden*, 78 Wisc. 237, 47 N. W. 436, that:

“A receiver is the mere servant or agent of the Court to do its bidding, and he cannot be heard to question by appeal, the regularity or propriety of the orders of the Court in the action, unless the Court first authorizes him to do so.”

It has also been held that an appellate court may, on its own motion, dismiss an appeal by a receiver in which he has no interest.

See:

*Chicago Title & Trust Co. v. Caldwell*, 58 Ill. App. 219;

*Foreman v. Defrees*, 120 Ill. App. 486.

In *Chicago Title & Trust Co. v. Caldwell*, *supra*, the Court held:

“This point has not been made by counsel for the appellee, but we cannot sanction, even by silence, the idea that a receiver may set up in opposition to the court, his theories of how the assets shall be disposed of.”

It cannot make any difference to the receiver whether this respondent collects the rents of the premises mortgaged in its foreclosure proceeding,

or whether the receiver collects the same and disposes of them under a later order of the Court. The receiver will not add anything to the corpus of the estate of the insolvent corporation, if the order complained of is reversed, but the money, instead of going to one group of persons, may go to another.

The receiver, by this appeal, is burdening the estate with the costs and expenses of his appeal, etc. Assuming, but not admitting, that the receiver may be successful, by projecting himself into a quarrel between the parties which is no concern of his, he is diminishing the estate by his efforts.

*There is no order of the Court below permitting him to take this appeal.*

For these reasons, if for no others, this Honorable Court should dismiss the appeal of the present receiver-appellant.

## POINT II.

### **The appellant has not been aggrieved by the order appealed from.**

The appellant, in order to sustain this appeal, and properly move it before this Honorable Court, must show that he has been aggrieved by the order appealed from. This cannot be shown in the case at bar. The appellant is a statutory receiver of the defendant company. Of necessity, he must stand impartially between the parties. If the Court of his appointment has removed him from the control of the mortgaged property involved in this litigation, the receiver himself cannot show that he has been aggrieved.

“The receiver has no right to appeal from a decree removing him from his position, for

his appointment and removal are interlocutory orders, and are made at the discretion of the appointing court. *The receiver has no vested right to his appointment.* A receiver has no right to appeal from a decree authorizing the issue of receiver's certificates or directing a particular management of the property, or directing the sale of the mortgaged property, or confirming its sale, or directing the turning over of the property in his hands, for *he is neither the censor of the court nor personally interested in such orders.* He may appeal from an order or decree which affects his personal rights, provided it is not an order resting in the discretion of the court. He may not appeal from an order discharging or removing him, but he may appeal from an order disallowing him commissions or fees because that affects him personally and is not a matter purely and entirely of discretion." *Clark on Receivers*, Vol. I, Sec. 605, page 826.

See also:

*Bosworth v. Terminal Railroad Ass'n*, 174 U. S. 182, 43 L. Ed. 941, *supra*.

"A refusal by the Chancellor to appoint a receiver or the removal of a receiver when appointed, is not the subject matter of appeal." *Garr v. Hill*, 5 N. J. Eq. 639, *supra*.

See also:

*Swackhamer v. Kline's Administrator*, 25 N. J. Eq. 503;  
*Raleigh v. Rogers*, 25 N. J. Eq. 506.

"Relief by appeal from Chancery, is only for persons aggrieved by the order or decree appealed from." *Eugster v. Eugster*, 89 N. J. Eq. 531.

See also:

*Beckhard v. Rudolph*, 68 N. J. Eq. 749;

*Chancery Act*, Sec. 111, P. L. 1902, p. 545,  
as amended by P. L. 1907, p. 452, as  
amended by P. L. 1914, Ch. 86, p. 133,  
*1 Cum. Sup. to Comp. St.*, page 269, Secs.  
33-111.

See also:

*Kotok v. Hamilton*, 101 N. J. Eq. 295.

### POINT III.

**The receiver-appellant does not deny that the Court below had the right and the power to divert the rents to the mortgagee because of the fact that the security was uncertain, precarious and inadequate.**

The receiver-appellant does not, either in his petition of appeal or in the brief filed, controvert the *facts proved* in the Court below regarding the insufficiency, uncertainty and inadequacy of the security for the mortgage debt. It is the settled law in this State that where the security for a mortgage debt becomes uncertain and precarious, the Court of Chancery has the power and right to appoint a receiver to collect the rents on application of the mortgagee.

See:

*Broad and Market National Bank v. Larsen*, 68 N. J. Eq. 245;

*Stewart v. Fairchild-Baldwin Co.*, 90 N. J. Eq. 139;

26 A. L. R. 50, and cases therein cited.

The petition of appeal sets forth four grounds upon which the appellant seeks to reverse the or-

der of the Court below: the first is that the Court below is without jurisdiction to appoint a rent receiver; the second point made is that the appointment of a rent receiver was an abuse of discretion; third, that the mortgagee was not in possession of the property; and fourth, the statement of fact that the order appointing a rent receiver was a removal of the statutory receiver. Nowhere does the appellant say that the mortgagee, because of the fact that the security was worth less at the time of the appointment of a rent receiver than the amount of the liens against it, was not entitled to a diversion of the rents to it in accordance with the settled doctrine of this State in such cases.

The duly verified petition, and the affidavit filed in the Court below (State of Case, pp. 13 to 19, inclusive; State of Case, pp. 30 to 35, inclusive), show that the property was encumbered by a first mortgage in the original sum of \$125,000, and the mortgage of this respondent in the reduced sum of \$24,000.06, together with interest from October 5, 1929, and unpaid taxes to the extent of about \$1,500. The bill of complaint, by the mortgagee (State of Case, pp. 20 to 27, inclusive), shows that the respondent, besides the debt of \$24,000.06, together with interest thereon, had owing to it the sum of \$3,750, which represented accrued interest paid by the respondent to the holder of the first mortgage; as well as an insurance premium owing to it in the sum of \$299.75, with interest thereon. The unpaid liens, then chargeable against the property, amounted to more than \$155,000. The affidavits presented to the Court below show that the property was worth not more than about \$135,000. As a matter of fact, even the affidavit submitted by the appellant showed that the property was worth not more than \$150,000. Clearly, this is a case where the mortgage security had

become inadequate, uncertain and precarious, and there can be no question that the Court below, in seeking to protect the mortgagee's interest, was acting in accord with sound equity and good conscience.

#### POINT IV.

**The appointment of a receiver to collect the rents, issues and profits was within the discretion of the Court below; in the case at bar it cannot be shown that the Court abused that discretion.**

The Court below did not abuse its discretion in giving effect to liens which existed as liens on the property when its statutory receiver took possession. It has been held:

“Where the receiver of this Court, under authority of statute and under the direction of the Court, has assumed the possession of all the personal property of the insolvent corporation, this Court is bound to give effect to liens which existed as liens on the property when its receiver took possession.” (*Pomeroy*, Vol. IV, Sec. 1577, p. 3705.)

See also:

*Duryee v. United States Credit System Co.*,  
55 N. J. Eq. 311;

*Doane v. Millville Ins. Co.*, 45 N. J. Eq. 274.

By the appointment of a receiver to collect the rents on application of the mortgagee, the Court below was merely enforcing the rule in giving effect to existing liens. It has also been held:

“It is well established that where a Court takes possession of the property of a party, and appoints a receiver to administer the trust

for the benefit of all interested parties, the Court receives such property impressed with all existing rights and equities, and the relative rank of claims and the standing of liens remain unaffected by the receivership. Every legal and equitable lien upon the property is preserved with the power of enforcing it. The receivership does not destroy any liens that may have been acquired before the appointment." *Pomeroy*, Vol. IV, Sec. 1576, page 3703.

Again,

"It (a lien) fastens itself upon the property, and whoever takes the property takes it *cum onere*, \* \* \* and, though the assets pass into the hands of receivers, they take with all the liens thereon, \* \* \*." *Pomeroy*, Vol. IV, Sec. 1577, page 3706.

See also:

*Miller v. Savage*, 60 N. J. Eq. 204.

It has been conceded, I think, by the appellant that, assuming there had been no statutory receiver appointed for the defendant company, this respondent would have been entitled to the appointment of a receiver to collect the rents. If that is so, why should the appointment of a statutory receiver for the insolvent company disturb that right? The adjudication that the defendant company was insolvent and the appointment of a receiver therefor, are merely more cogent reasons in support of the application of this respondent for a receiver to collect the rents. Not only had the mortgage security become uncertain, inadequate and precarious, to satisfy the debt owing to this respondent, but, to make matters worse, the corporate maker of the bond and mortgage was declared to be insolvent, thereby rendering it totally unable to respond to any deficiency that

might arise. Why should such an adjudication disturb the right of the mortgagee to apply for such relief to which, in the absence of any adjudication of insolvency, it was clearly entitled?

See:

*Broad and Market National Bank v. Larsen, supra;*

*Stewart v. Fairchild-Baldwin Co., supra.*

In the case of *Girard Trust Co. v. Standard Gas Co.*, 93 N. J. Eq. 307, the mortgage under foreclosure had been given by the defendant company to the complainant. Shortly before the foreclosure had been commenced, the defendant company was adjudged insolvent and a statutory receiver was appointed therefor. When the receiver took hold, there came into his hands book accounts, the monies due from customers to the defendant company. The complainant claimed that the book accounts of the corporation belonged to it. The case at bar presents an almost similar fact situation to this case. The only difference is that, in the case at bar, the question arises over the disposition of rents, while in the *Girard Trust Company* case, the question arose over the diversion of book accounts.

The difference, in fact, is a small one, because both the book accounts in the *Girard* case and the rents in the present case are earnings of the defendant corporation derived at the expense of the mortgaged security. Vice-Chancellor BACKES, in allowing such book accounts to the complainant, said:

“The complainant might well have applied for a receiver in foreclosure, and thus would have been entitled to all the earnings.”

**CONCLUSIONS.**

For the reasons urged herein, the orders advised in the Court below should be affirmed with counsel fees and costs in this Court.

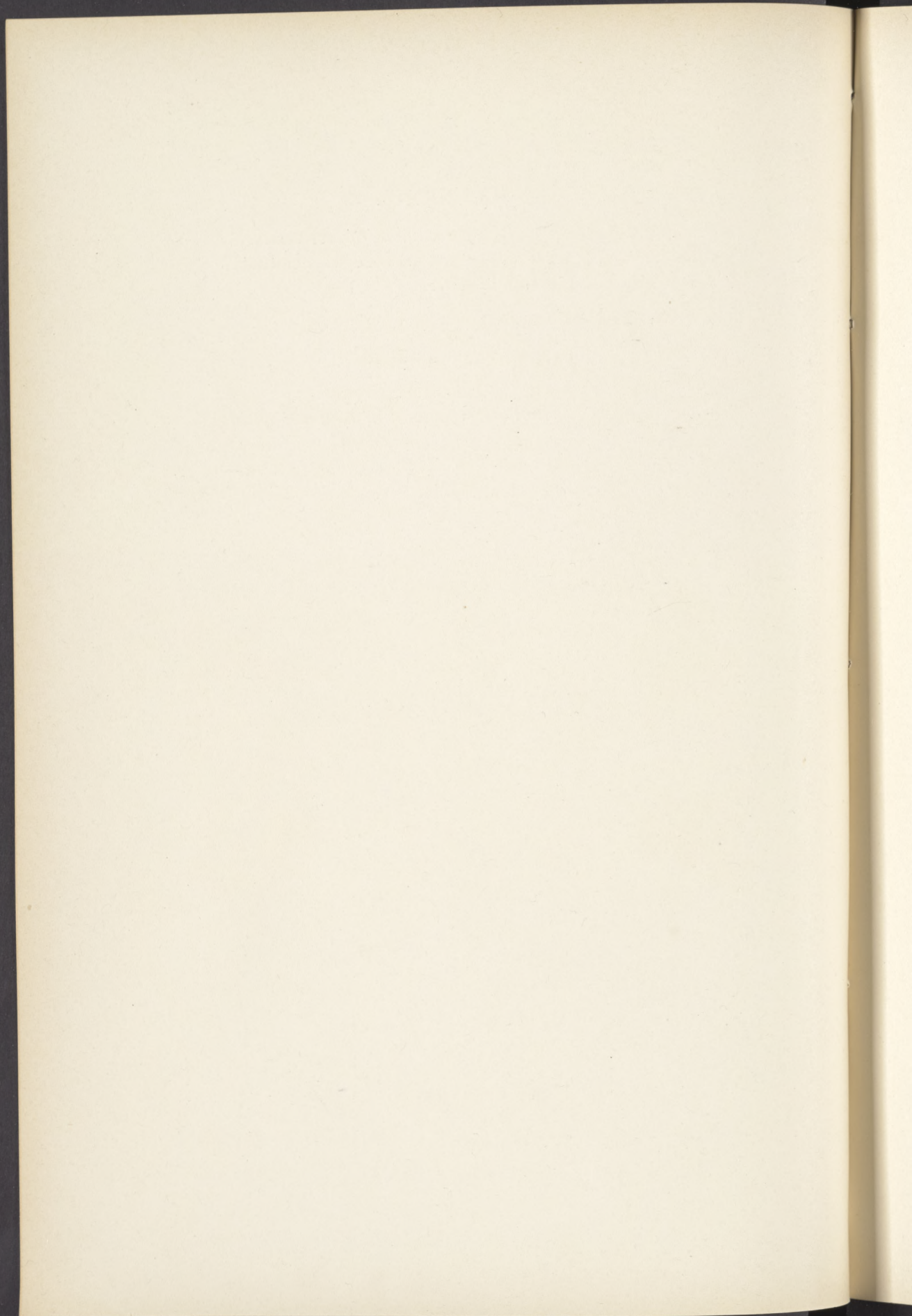
(N. B.—Italics mine.)

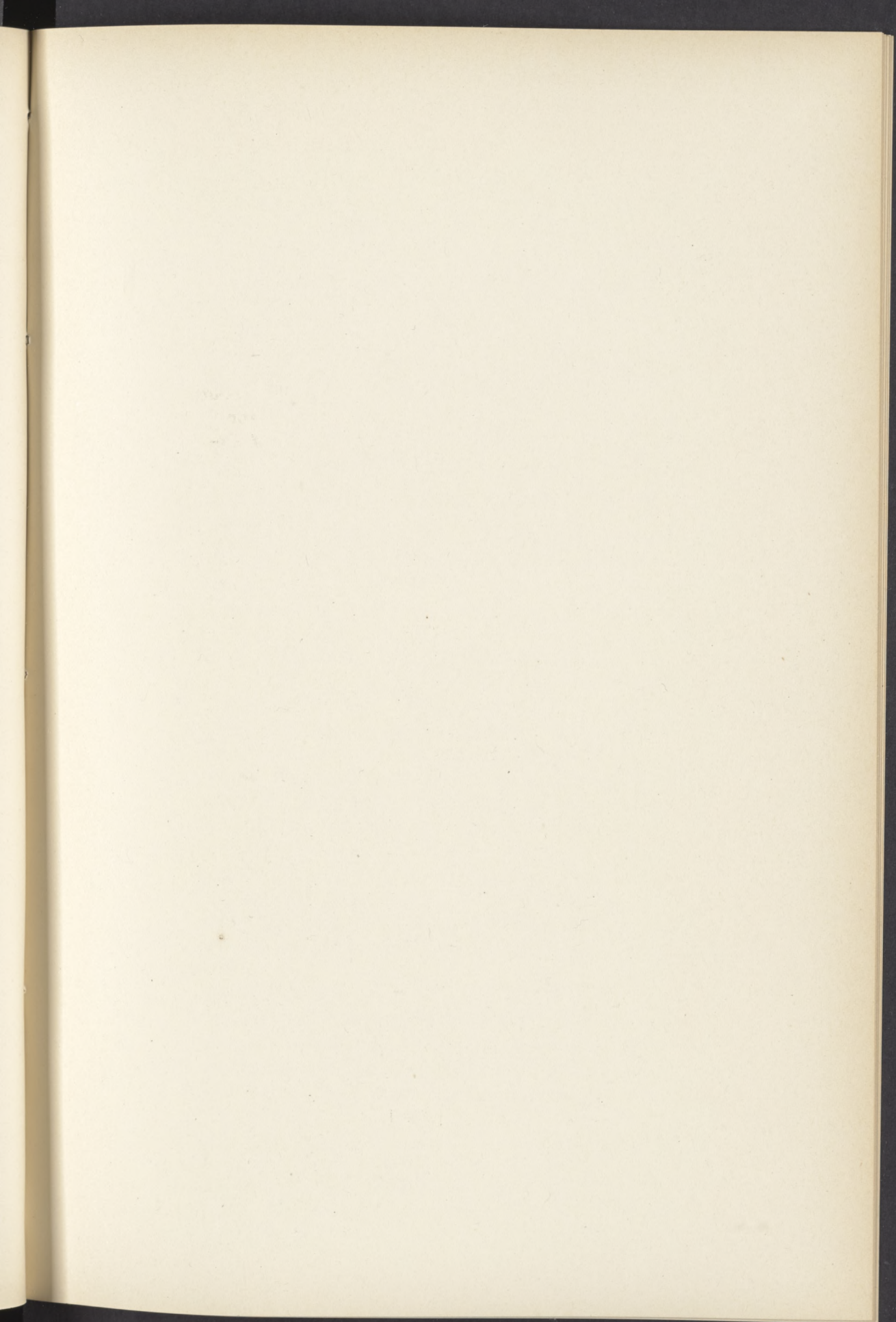
Respectfully submitted,

JEROME C. EISENBERG,  
*Solicitor for and of Counsel with  
Mortgage Security Corporation  
of New Jersey, Complainant-  
Respondent.*

## E R R A T U M

When Pomeroy is cited herein on pages 10 and 11, it is intended for Pomeroy's Equity Jurisprudence, Fourth Edition.





[3604]

## New Jersey Court of Errors and Appeals

Between

MORTGAGE SECURITY CORPORATION  
OF NEW JERSEY, a corporation,  
*Complainant-Respondent,*

and

MARK TOWNSEND, JR., Receiver of  
Park Avenue Holding Com-  
pany, *et al.,*  
*Defendants-Appellants.*

On Appeal from  
Court of  
Chancery.

### BRIEF FOR APPELLANTS.

#### Statement.

This is an appeal from two interlocutory orders made by the Chancellor on the advice of V. C. JOHN J. FALLON in the above cause on the 31st day of March, 1930, and the 2nd day of April, 1930, respectively, wherein the Chancellor appointed David Needell receiver, to take charge of certain premises described in the bill of complaint in this cause and to manage the same with power to sue for, collect and receive the rents, issues and profits thereof and such other acts, etc. (State of Case, p. 9).

A bill of complaint was filed in the Court of Chancery on January 14th, 1930, wherein William Fink was complainant and the Park Avenue Holding Company was defendant, charging among other things that the Park Avenue Holding Com-

pany was insolvent and praying for the appointment of a receiver in accordance with the statute in such case made and provided.

Thereupon, the Chancellor, on the advice of the late V. C. JOHN BENTLEY, adjudged the said Park Avenue Holding Company to be insolvent and appointed Mark Townsend, Jr., receiver of the said Park Avenue Holding Company with all the rights, powers and duties imposed upon and required by law, especially by virtue of an act entitled, "An Act Concerning Corporations (Revision of 1896)" and the acts supplementary to and amendatory thereof, and further authorized and empowered the said Mark Townsend, Jr., as said receiver, to conduct and continue the business of the said Park Avenue Holding Company without interruption and generally to do all acts and things proper and necessary to be done to protect the property and rights for the benefit of the creditors and stockholders of said company.

On January 20th, 1930, by an order made by the Chancellor on the advice of the late V. C. JOHN BENTLEY, the said Mark Townsend, Jr., was continued as receiver of the Park Avenue Holding Company with all the powers conferred upon him by the aforesaid order of January 14th, 1930.

Mark Townsend, Jr., duly qualified as such receiver and acted as such from the 14th day of January, 1930, until the entry of the order complained of and filed in the Court of Chancery on March 31st, 1930, restraining and enjoining him from collecting or receiving all or any part of the rents, issues and profits.

Respondent on March 7th, 1930, filed in the Court of Chancery its bill of complaint (State of Case, p. 20) in which it prayed for a decree directing the payment of the balance due on its mortgage and in default of such payment that the Park

Avenue Holding Company be foreclosed of all equity of redemption in said land.

Upon the filing of said bill of complaint, respondent petitioned the Chancellor for an order appointing a receiver to collect the rents, issues and profits of the premises referred to in these proceedings and requesting that the said Park Avenue Holding Company or Mark Townsend, Jr., receiver of Park Avenue Holding Company, be enjoined from collecting or receiving any or all of the rents, issues and profits of the said mortgaged premises.

Upon the return of the said petition and order to show cause, the Chancellor on March 31st, 1930, appointed David Needell of the City of Newark, State of New Jersey, receiver of the mortgaged premises, located at No. 608 Park Avenue, West New York, N. J., with power to manage the same, sue for, collect and receive the rents, issues and profits thereof, etc., and further restraining Mark Townsend, Jr., receiver of the Park Avenue Holding Company, from collecting or receiving any part of the rents, issues and profits and restraining the tenants from paying any other rents to any person other than David Needell, receiver as aforesaid.

This is the same proceeding in which appellants secured from this Honorable Court on April 10th, 1930, an order staying the execution of the said order appointing David Needell receiver of rents until the final determination of this appeal.

Appellants contend that the Chancellor erred in appointing a receiver of the rents, issues and profits during the time that a receiver was properly acting in such capacity under an order of the Chancellor made previous thereto.

## POINT I.

**The action of the Chancellor in substituting a receiver to collect the rents, issues and profits, etc., was improper because no proof was offered to show improper conduct on the part of the initial receiver.**

Mark Townsend, Jr., duly qualified as receiver of the Park Avenue Holding Company and acted as such from the 14th day of January, 1930, until the entry of the order of the Chancellor on March 31st, 1930, restraining him from collecting and receiving the rents, issues and profits, etc. At the time of his appointment as receiver, no one appeared in opposition thereto.

The appointment was made by virtue of "An Act Concerning Corporations (Revision of 1896)" and the acts supplementary to and amendatory thereof, by the terms of which the receiver was given

"\* \* \* full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation \* \* \*"

The receiver having been duly authorized to perform the required duties, there was no necessity for the substitution of another receiver, because the initial receiver was possessed of the necessary powers to protect the interest of all parties involved, and so long as he performed the duties imposed upon him, his rights as receiver should not have been impaired.

In an opinion relating to the termination of the duties of a receiver, the Chancellor, in the case of *Robert McCullough v. The Merchants Loan and Trust Company*, 29 N. J. Equity 217, said:

“When a corporation becomes insolvent, the Court by authority of law takes possession of its assets for the benefit of creditors and stockholders and through the instrumentality of an officer and its own creation converts them into money and distributes them. The Court confers its functions and may put an end to them whenever it deems it expedient to do so but like all other judicial action resting in discretion, its exercise should always be grounded in some consideration of justice or convenience. It should never be exercised capriciously or arbitrarily, but only for cause.”

The Court of Errors and Appeals of New Jersey in the case of *Eelman v. Johnson Products Company, Inc.*, 143 Atlantic 326, wherein a similar question arose, said:

“\* \* \* Where, as here, a statutory receiver has been properly appointed by the Court, such receiver after hearing upon an Order to Show Cause why he should not be continued, may be continued by the Court in the absence of evidence that he is incompetent or unfit by reason of partiality or interest and where the only objection is that of the stockholders that a receiver of their own selection should be named.”

And in the case of *In re Bennett*, 2 Hughes (U. S.) 156 (Fourth Circuit), a similar question arose in connection with the appointment of a receiver to supersede an assignee who had been appointed by the Court to take over certain property involved in the action and the Court in its opinion stated:

“There was no necessity for the appointment of a receiver because in legal effect, the assignee already occupied that position. They were acting for the benefit of whom it might concern. They received and held the rents for such persons as should for the time be entitled to them.”

That it is against the policy of the courts to appoint a rent receiver when a general receiver is already in possession of the premises is indicated, we submit, by the opinion of Vice-Chancellor BACKUS, in the case of *Girard Trust Co. v. Standard Gas Co.*, 93 N. J. E. 307, where he says, at page 310:

“\* \* \* The complainant might well have applied for a receiver in foreclosure and thus would have been entitled to all the earnings. *None, perhaps, would have been appointed because the property already was in custodia legis*, but the status of the mortgagee in possession, in legal contemplation, would have been thereby attained. And while it is so that the possession of the receiver in insolvency was not in law the possession of the mortgagee, and was not for its benefit, \* \* \* the mere failure of the complainant to avail itself of its legal rights in this respect is no reason for depriving it of an equity in the funds earned at the expense of its security. \* \* \*”

imposed upon the premises additional administration expenses of the rent received to the injury of all parties concerned.

And in the case of *In re Bennett*, 2 Hughes (U. S.) 156 (Fourth Circuit), a similar question arose in connection with the appointment of a receiver to supersede an assignee who had been appointed by the Court to take over certain property involved in the action and the Court in its opinion stated:

“There was no necessity for the appointment of a receiver because in legal effect, the assignee already occupied that position. They were acting for the benefit of whom it might concern. They received and held the rents for such persons as should for the time be entitled to them.”

In the present case no evidence has been produced by the respondent to show that the receiver did any act or performed any duty which rendered him unfit to manage the business. The conduct of the receiver has in nowise been assailed, nor has it been shown that he derived or obtained any benefit which in equity might be sufficient cause for his removal. In the absence of such evidence as to indicate incompetency or unfitness for office, the initial receiver should have been permitted to carry out the duties of his office under the appointment made by the Chancellor on the advice of V. C. JOHN BENTLEY.

The Court of Chancery is possessed of the power to appoint a receiver and when a receiver has been appointed he is under the control of the Court so that it is wholly unnecessary to have some other receiver to perform the same duties, because it ultimately results in much confusion and expense. Consequently, by the order substituting a new receiver the Court needlessly and without warrant imposed upon the premises additional administration expenses of the rent received to the injury of all parties concerned.

If the respondent had any rights in the rents over other creditors it could have by petition and order required the initial receivers to impound the rents and pay them over to it.

In view of the foregoing, it is submitted that the action of the Chancellor in substituting a receiver and restraining your appellants from collecting or receiving all or any part of the rents, issues and profits was without warrant and should be reversed.

Respectfully submitted,

MARK TOWNSEND, JR.,  
~~Solicitor of Defendants-Appellants.~~  
*counsel pro se.*

APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[3499]