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BILL OF COMPLAINT.

(Filed Sept. 2, 1927.)

IN CHANCERY OF NEW JERSEY.

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

The petition of John Schuster, who resides at Egg Harbor City, in the County of Atlantic and State of New Jersey, and who files this petition on behalf of himself and such other similarly situated mortgage holders who shall come in and contribute to the expense of this suit, respectfully shows:

1. Petitioner is the complainant herein and has heretofore filed his bill of complaint the general object of which is to foreclose twenty-two mortgages made by Ventnor Gardens, Incorporated, to petitioner, John Schuster. Each of the said twenty-two mortgages is in the amount of fifteen hundred dollars and were made to secure twenty-two separate bonds, each in the penal sum of three thousand dollars, conditioned upon the payment of fifteen hundred dollars each within one year from the date thereof. All of said bonds and mortgages were made and dated during the months of October and November in the year 1926.

2. Complainant's said twenty-two mortgages cover respectively the following lots in Ventnor City, N. J., viz: Lot 10 in Block 270; Lot 2 in Block 270; Lot 15 in Block 280; Lot 14 in Block 280; Lot 13 in Block 280; Lot 12 in Block 280; Lot 11 in Block 270; Lot 5 in Block 270; Lot 4 in Block 270; Lot 7

in Block 270; Lot 3 in Block 270; Lot 6 in Block 270; Lot 8 in Block 270; Lot 9 in Block 280; Lot 9 in Block 270; Lot 21 in Block 270; Lot 10 in Block 280; Lot 7 in Block 280; Lot 8 in Block 280; Lot 6 in Block 280; Lot 5 in Block 280; Lot 11 in Block 280, as delineated on a certain map entitled, "Map of Ventnor Gardens, situate in Ventnor City, N. J. owned by F. J. Pedrick & Son, Scale 1 in. equals 100 ft., March, 1926, E. D. Rightmire, Civil Engineer and Surveyor, Atlantic City, N. J.," which map is on file in the Atlantic County Clerk's office.

3. The taxes on the said demised premises mentioned in the said twenty-two mortgages have not been paid for the year 1927 and such taxes are now in arrears in the amount or sum of
together with lawful interest thereon since the first day of June, 1927.

4. Complainant further shows that on January 7, 1926, a certificate of incorporation of Ventnor Gardens, Incorporated, was filed in the office of the Secretary of State of the State of New Jersey and the company was then and there created a body politic and corporate in fact and in law by the name and style of Ventnor Gardens, Incorporated, for the purpose of buying, developing and selling real estate and carrying on the business incident thereto and for such purposes the company was authorized to raise, by subscriptions, a capital stock of twenty-five thousand dollars to be divided into shares of one hundred dollars each and the company was also authorized to issue certificates of stock and to purchase, use, hold, possess and enjoy real estate for the uses of the said company and to sell, mortgage, lease or otherwise dispose of the same at pleasure.

5. Ventnor Gardens, Incorporated, was duly organized as aforesaid and the whole of the said capital stock subscribed, officers and directors were duly elected and at the present time the officers of the said corporation are John A. Fitzsimmons, Third, president; Helen Cloherty, secretary and treasurer.

6. Thereafter Ventnor Gardens, Incorporated, purchased a tract of about one hundred and sixty-five acres of meadow land in Ventnor City, Atlantic County, New Jersey and thereupon proceeded to develop the said meadow land in the usual style of a so-called real estate development by filling in the said meadows by means of dredging sand from adjacent thoroughfares and thereby raising said lands to the grade of the surrounding lands of the City of Ventnor and to lay out streets and sidewalks in said tract and, among other things, to fill in a certain waterway or thoroughfare separating said lands from the City of Ventnor City proper, which thoroughfare, when filled in, would give access by the public over the streets to be created in said tract and make the same accessible as a real estate development. Said lands are more particularly described as follows:

ALL THAT CERTAIN lot, tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows: lying between Inside Thoroughfare on the South and Beach Thoroughfare on the North and known as Block No. 5 and described as follows:

BEGINNING at a stake on the northwesterly side of Inside Thoroughfare, near the sheep pen fence and is the easterly corner of lot 6; thence in line of lot 6 northwardly 35½ degrees westwardly about 42 chains to Beach Thoroughfare; thence binding

same southwardly 85½ degrees eastwardly about 2¼ chains; thence southwardly 49½ degrees eastwardly 19.20 chains; thence northwardly 9½ degrees eastwardly 22.20 chains; thence northwardly 24½ degrees westwardly 10.80 chains to the corner of lot 4; thence in line of lot 4 southwardly 32 degrees eastwardly about 70¼ chains to Inside Thoroughfare; thence binding same in a southwesterly direction about 33½ chains to the place of beginning.

7. Immediately upon commencing the said improvement the company laid out the said tract into streets, highways and building lots and placed on sale to the general public approximately fourteen hundred building lots and sold a great number thereof to the general public at prices aggregating in excess of two and a half million dollars. Practically all of said lots were sold on installments of ten per cent at the time of purchase and the balance payable in monthly installments of two per cent of the purchase monthly at the office of Frank J. Pedrick and Son in Atlantic City, New Jersey, until fifty per cent of the purchase price should be paid, when title was to be given to the buyer and a purchase money mortgage for the balance of fifty per cent of the purchase price was to be executed and delivered by the buyer. Such agreements of sale obligated the company to fill in the lots as aforesaid, lay out the streets, grade the same, lay out curbs and sidewalks on or before January first, 1928. In pursuance of these several general agreements of sale Frank T. Pedrick & Son entered into a contract with the United Dredging Company for dredging and placing sand upon the said lands and raising the same to grade.

8. After the said lots were plotted upon the map as aforesaid and while the same were being raised to grade as aforesaid, Ventnor Gardens, Incorporated, in order to raise money for its general business and specifically for the purpose of defraying the cost of raising the said lands to grade and laying out the streets and sidewalks thereon and otherwise completing the said development, borrowed from the complainant the sum of thirty -three thousand dollars and gave to complainant, as an evidence of the said debt, the twenty-two bonds mentioned in paragraph 1 of this petition, and to secure the said payment of the said several loans of fifteen hundred dollars, aggregating in whole thirty-three thousand dollars, executed twenty-two several mortgages upon the twenty-two several lots laid out and plotted in the said lands as aforesaid, and being a part of the same lands mort particularly described in paragraph 6 of this petition.

9. At the time of the said loan of the said various sums of fifteen hundred dollars, totalling thirty-three thousand dollars, petitioner was induced to make the said loan and to receive the said bonds and mortgages upon the representation of the said company's officers that the said mortgages would be a first lien upon the lots hereinabove described.

10. Petitioner has since discovered that the said mortgages, when recorded on or about December tenth, 1926, were subject to the prior liens and encumbrances of certain other mortgages, to wit: a mortgage in the sum of $187,500 dated on or about the twenty-first day of September, 1926, given by Frank Sullivan, *et ux.*, to the estate of Israel G. Adams, and another mortgage, which, by its terms, was of equal lien and priority to the said above men-

tioned mortgage, aggregating $62,500, given by said Frank Sullivan, *et ux.*, to John O. Wilson, which mortgages were existing liens upon the said property at the time of its conveyance to the said Ventnor Gardens, Incorporated.

That on or about November tenth, 1926, Ventnor Gardens, Incorporated, made and executed a mortgage that was second in priority to the above recited mortgages to one Samuel B. Dobbs to secure the principal sum of two hundred and fifty thousand dollars, but which your petitioner is informed and verily believes that the said Samuel B. Dobbs advanced only two hundred thousand dollars of the said principal sum. Said mortgage was due in installments of various sums aggregating between fifteen and twenty thousand dollars during the months of May, June, July, August, September, October, November and December, 1927, and January, February, March, April and May of 1928.

11. Complainant further shows that on or about September 21, 1926, the said Ventnor Gardens, Incorporated, made an agreement with Frank J. Pedrick and Son, a partnership consisting of Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, whereby the said partnership of Frank J. Pedrick and Son was to act as general agent for the company in and about making sales of lots, procuring contracts for the development of the said lands and for negotiating funds to carry on the said work, and particularly mortgage funds and otherwise conduct all necessary business looking toward the carrying out of the enterprise. Complainant is further informed and verily believes that the said firm of Frank J. Pedrick and Son was the dominating influence in the control of the affairs of the said Ventnor Gardens, Incorporated, and that the members of

the said firm owned ninety per cent of the stock of the said Ventnor Gardens, Incorporated, and that the success of the business of said company is largely dependent upon the financial stability of the said Frank J. Pedrick and Son. That the said Frank J. Pedrick and Son was a widely known and widely advertised business devoted entirely to real estate developments; that it had numerous enterprises similar to that of the business of the Ventnor Gardens, Incorporated, and that it was actively engaged in the development of other plots of land in and about Atlantic City, New Jersey, upon the said general plan as that of the above mentioned company.

12. That in the spring of 1927 the said firm of Frank J. Pedrick and Son became involved in financial difficulties and was no longer able to carry on its business or to procure the necessary finances to carry on the business of the various development companies of which it was virtually the owner; that on April 23, 1927, the said partnership and the individual members thereof, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran assigned to John C. Slape of Atlantic City, N. J., Bentley H. Pope of Trenton, N. J., and Harlan H. Bradt of the City of New York, State of New York, as trustees, all of their goods and chattels, notes, bonds, corporate stocks, moneys, rights and credits, including the stock of the Ventnor Gardens, Incorporated, held either in the partnership or individually by the members thereof, in trust for the various purposes enumerated in the said agreement, a copy of which agreement is attached hereto and made a part hereof. That thereafter the said trustees John C. Slape, Bentley H. Pope and Harlan H. Bradt assumed the direction of the affairs of Ventnor Gardens, Incor-

porated, and proceeded for a short time to continue the development of the said properties. That thereafter the said trustees became in fact the active managers of the property of Ventnor Gardens, Incorporated, and as such trustees received in the name of the company large sums of money from lot purchasers as payments upon their contracts of purchase aggregating more than one hundred thousand dollars; that they disbursed these moneys for various purposes connected with other enterprises of Frank J. Pedrick and Company and not for the benefit of Ventnor Gardens, Incorporated. That on or about the twenty-seventh day of May, 1927, the said trustees caused to be assigned to Bentley H. Pope, Edward C. Stokes and John C. Slape, individually, the $250,000 mortgage owned by Samuel B. Dobbs, hereinabove recited, for a consideration of one thousand dollars, which assignment was duly made by Samuel B. Dobbs. Complainant is informed and verily believes that either the assignees or the trustees acting for the assignees actually paid said Samuel B. Dobbs the sum of two hundred thousand dollars as the consideration for the said assignment. That on January thirty-first, 1927, Ventnor Gardens, Incorporated, executed a mortgage to Samuel B. Dobbs in the principal sum of two hundred and fifty thousand dollars, which said mortgage was given to secure the same debt as that secured by the bond and mortgage of $250,000 above recited, dated November tenth, 1926, made by Ventnor Gardens, Incorporated, to Samuel B. Dobbs, which said mortgage was likewise assigned by Samuel B. Dobbs, on or about May 27, 1927, to Bentley H. Pope, Edward C. Stokes and John C. Slape for an alleged consideration of $235,000. That thereafter, on or about June 17, 1927, they caused to be executed a contract between Ventnor Gardens, Incorporated,

and United Dredging Company, a Delaware Corporation, whereby, in consideration of the sum of $267,000 the said United Dredging Company agreed to complete the fill of the premises described in paragraph 6. Complainant is informed and verily believes that the consideration of the said contract covered moneys due individually by Frank J. Pedrick and Son to the amount of approximately thirty-one thousand dollars, which sum was uncollectible by the United Dredging Company from the said firm because the said firm was then actually insolvent. That the United Dredging Company had no contract for the performance of any work with Ventnor Gardens, Incorporated, prior to June 17, 1927, but a contract with Frank J. Pedrick and Son and that it owed no liability whatsoever to the said United Dredging Company. That pursuant to a scheme to further encumber the property of the Ventnor Gardens, Incorporated, and to dissipate its assets for the benefit of other companies and property of Frank J. Pedrick and Son and for the benefit of Bentley H. Pope, John C. Slape and Harlan H. Bradt, for themselves individually and as trustees as aforesaid, they caused a certain mortgage to be executed by Ventnor Gardens, Incorporated, covering all the property of Ventnor Gardens, Incorporated, in the sum of nine hundred thousand dollars, to secure a bond issue of like amount; which mortgage was executed to the Atlantic County Trust Company, a New Jersey banking corporation, as trustee. And that further in pursuance of a plan or design to dissipate the assets of Ventnor Gardens, Incorporated, the said trustees, acting for themselves or as trustees, but without any authority in said trust agreement so to do, or without any right so to do, borrowed certain sums of money from certain banks in Atlantic City aggregating the sum

of $155,000, and issued $230,000 of the said $900,000 bond issue as collateral security for the payment of the said sum so borrowed. Complainant is further informed and verily believes that little, if any, of the said $155,000 was used for the benefit of the Ventnor Gardens, Incorporated, but was used for the use and benefit of other corporations dominated by Frank J. Pedrick and Son which had been taken over by the trustees. That on or about the twenty-sixth of August, 1927, the said trustees publicly abandoned their trust and since that time until the present said company has been without any directing head except that of its general officers who are but nominal stockholders.

13. Complainant is informed and verily believes that various sums of money due upon the contracts for the sale of lots are being sent to the office of Frank J. Pedrick and Son but is not being received by any person in authority nor placed in bank to the credit of any person and that the office of the corporation has been virtually abandoned.

14. Complainant further shows that on or about August twenty-ninth, 1927, a petition in bankruptcy was filed in the United States District Court for the District of New Jersey praying that Frank J. Pedrick and Son, as a partnership, be adjudicated bankrupt and that a receiver in bankruptcy was thereupon appointed, which receiver is one Hiram Steelman of the City of Atlantic City.

15. That the said receiver is not receiving moneys due and owing to Ventnor Gardens, Incorporated or otherwise accruing for the property of said Ventnor Gardens Incorporated.

16. Complainant is further informed and verily believes that a bill in equity has been filed in the Court of Chancery of New Jersey by the Kwass Realty Company, as complainant, against Winchester Development Company as defendant, another corporation largely owned and managed by Frank J. Pedrick and Son, which recites among other things that it holds a judgment in the sum of $49,851.09 and that because of an interest therein alleged that a lien for said sum of $49,851.09 be impressed upon the lands of the Ventnor Gardens, Incorporated above described as a lien prior to that of complainant's mortgages.

17. Complainant is informed and believes that there is due and owing to Ventnor Gardens, Incorporated, by purchasers of lots in said development under contracts of sale wherein such purchasers, numbering about six hundred have agreed to purchase lots aggregating seven hundred in number, of a total value of two million five hundred thousand dollars, sufficient moneys to complete the said real estate development of the lands described in paragraph 6, including the lands subject to the lien of complainant's mortgages, and to pay to complainant upon their maturity moneys due to complainant upon the bonds and mortgages hereinabove recited.

18. Complainant says that by reason of the things above recited and the virtual abandonment of the work of completing the improvements, by either the trustees above mentioned, John C. Slape, Bentley H. Pope and Harlan H. Bradt or by Frank J. Pedrick and Son or by the corporation, Ventnor Gardens, Incorporated, and by reason of the fact that complainant's mortgages appear to be only a third lien upon the said lands instead of a first lien as

represented to complainant, and by reason of the fact that the taxes have been suffered to become delinquent thereon, and by reason of the further fact that unless the said lands are filled in, graded, streets built, sidewalks laid, complainant will have no security whatever of any value for the moneys heretofore advanced to the said company upon the said bonds and mortgages, the said petitioner has virtually no security of value in the said twenty-two mortgages.

19. Complainant further shows, is informed and believes the fact to be that the said Ventnor Gardens, Incorporated, has no funds to carry on its ordinary business and that it has been and still is wasting and diverting its corporate assets, and has created preferential transfers of its property and that it has suffered or is about to suffer judgments to go against it which are not legitimate judgments and that it has suffered the transaction of its business to be carried on by the said trustees, John C. Slape, Bentley H. Pope and Harlan H. Bradt, which trustees have collected large sums of money in excess of one hundred thousand dollars upon contracts for the sale of lots, which sums have not been applied to the business of the corporation, but have been diverted to the payment of claims against other corporations owned and managed by Frank J. Pedrick and Son, to the great detriment of the corporation and to complainant and his mortgage security. And that the said company is now about to resume its business in a short time and that its business cannot be conducted with safety to the public and advantage to the stockholders or its creditors.

20. Complainant further shows that Harlan H. Bradt is an employe and under the control of the

United Dredging Company and that he has in all things acted in behalf of such dredging company and not for the interests of Ventnor Gardens, Incorporated.

Wherefore, complainant is without adequate remedy in the courts of law and therefore prays that Ventnor Gardens, Incorporated, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, individually, and as co-partners in the partnership of Frank J. Pedrick and Son, Hiram Steelman as receiver for Frank J. Pedrick and Son, and John C. Slape, Bentley H. Pope and Harlan H. Bradt, individually and as trustees for Frank J. Pedrick and Son, Bentley H. Pope, Edward C. Stokes and John C. Slape as assignees of two several mortgages dated November 10, 1926, and January 31, 1927, respectively, Kwass Realty Company and Atlantic County Trust Company, who are defendants to this suit, may answer this bill of complaint without oath and each statement made therein, and that the Ventnor Gardens, Incorporated, may full, true and perfect answer make to all and singular the matters hereinbefore stated, and that it may set forth and discover the goods and chattels, rights and credits, money and effects and real estate of every kind and description belonging to said company; that complainant, as a creditor and mortgage holder of the same company may be paid what is justly due to him and that the said trustees, John C. Slape, Bentley H. Pope and Harlan H. Bradt, be likewise decreed to account for, discover and set forth the goods and chattels, rights and credits, money and effects and real estate of every kind and description belonging to the said company which may have come into their hands as trustees or individuals or for which, by reason of any mismanagement, default or misappropriation of the moneys, rights, and credits or prop-

erty of said company they may be individually liable; and that John C. Slape, Bentley H. Pope and Edward C. Stokes be restrained from filing any bill to foreclose the two several mortgages assigned to them until it can be ascertained what sum, if any, is actually due thereon, and until the further order of this Court; and that the Atlantic County Trust Company be restrained from issuing any further bonds of the issue of nine hundred thousand dollars or of further encumbering the property of said Ventnor Gardens, Incorporated, or otherwise increasing its liability until the further order of this Court; and that the defendant, Kwass Realty Company be restrained from the further prosecution of its suit against the Ventnor Gardens, Incorporated, until the further order of this Court; and that a receiver may be appointed for Ventnor Gardens, Incorporated, with all the powers and privileges necessary to carry on and preserve the business of the said corporation, and to collect moneys due to the said corporation and to manage the said property and preserve the same pending the termination of this suit, with all the powers that may be necessary or proper for that purpose, with such restraints and injunctions in the premises as shall be appropriate and with further power to sue upon all contracts outstanding, for the enforcement of the same or to pursue any property or thing of value of the said company that may have been diverted or misappropriated therefrom until the further order of this Court.

And that complainant shall have such other and further relief as shall be agreeable to equity and good conscience.

EMERSON L. RICHARDS,
Solicitor for and of Counsel with Complainant.

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } *ss.*

JOHN SCHUSTER, of full age, being duly sworn according to law, upon his oath says that he has read the foregoing bill of complaint and that as to those things which are within his knowledge he deposes and says that the matters and things therein contained are true and that as to those things which are therein set forth as matters of belief, that I base such belief upon information furnished to me which I believe to be true; and that it is especially true that I hold twenty-two mortgages, each to secure twenty-two separate bonds in the amount of fifteen hundred dollars each, totalling the sum of thirty-three thousand dollars; that the said mortgages cover the lots mentioned in paragraph 2 of the bill of complaint; that the taxes for the first half of the year 1927 have not been paid upon any of the property of Ventnor Gardens, Incorporated, and especially have not been paid upon the lots demised to me in said mortgages, contrary to the covenant in said mortgages that Ventnor Gardens, Incorporated, would pay all taxes, assessments and charges that might be later levied upon the lands and premises described immediately upon their assessment, which assessment was made June first, 1927.

I further depose and say that I have commenced a foreclosure of all twenty-two of the said mortgages because of the default in the payment of the taxes.

Deponent further says that I am informed and believe that Ventnor Gardens, Incorporated, was incorporated as alleged in paragraph 4 of the bill of complaint and that it was duly organized, capital

issued and officers elected as alleged in paragraph 5 and that it purchased a tract of land of about 165 acres in Ventnor City and proceeded to the development of the same as a real estate development as alleged in paragraph 6 and that shortly thereafter it laid out the said tract in building lots as alleged in paragraph 7 and that the building lots mentioned by block and number in paragraph 2 of my bill of complaint were a part of the lots so laid out and upon which my mortgages are particularly a lien and that the land so plotted was sold under agreements of sale as alleged in paragraph 7, and that the Ventnor Gardens, Incorporated, borrowed from me the sum of thirty-three thousand dollars and gave as an evidence of said debt twenty-two bonds mentioned in paragraph one of the bill of complaint and gave the twenty-two mortgages aggregating fifteen hundred dollars each to secure the payment of the said bonds as described in paragraph eight.

Deponent further says that at the time that he made the said loans and paid the said money to the said company he was induced so to do by the representation of the officers thereof that the said mortgages were a first lien upon the lots therein described, whereas the fact was that there were mortgages aggregating $500,000 which mortgages were prior in lien to my mortgages and which mortgages are more particularly set out in paragraph ten of this complaint.

Deponent is informed and verily believes that an agreement was made between Frank J. Pedrick and Son and Ventnor Gardens, Incorporated, whereby the partnership was to act as general agent for the company in the making of sales of lots, procuring contracts for the development of the land and negotiating funds to carry on the work, and particularly mortgage funds, and that the said Frank J. Pedrick and Son's partnership was the dominating influence in the control of the affairs of the Ventnor Gardens, Incorporated, and that the said firm owned ninety per cent of the stock of the said company and that the success of the company was largely dependent upon the financial stability of the partnership.

That in the spring of 1927 the partnership was actually insolvent and in financial difficulties and that on April 23, 1927, the partnership and the individual partners assigned to John C. Slape, Bentley H. Pope and Harlan H. Bradt all their goods and chattels, notes, bonds, money and other personal property, including the stock of the Ventnor Gardens, Incorporated, in trust for certain purposes enumerated in said agreement. That thereafter John C. Slape, Bentley H. Pope and Harlan H. Bradt assumed the direction of the affairs of the Ventnor Gardens, Incorporated, and proceeded to collect large sums of money from lot purchasers aggregating more than one hundred thousand dollars, and to divert such moneys from the treasury of Ventnor Gardens, Incorporated, and disburse such moneys in payment of other claims against the partnership; that they likewise proceeded to cause assignments to Bentley H. Pope, Edward C. Stokes and John C. Slape of the Samuel B. Dobbs mortgages, which were prior in lien to that of deponent's mortgages, for a nominal consideration; that such mortgages were not held by the trustees as trustees but by the said Bentley H. Pope, Edward C. Stokes and John C. Slape individually. Deponent is informed and verily believes that there is not due upon the said mortgage the sum of two hundred and fifty thousand dollars.

Deponent further says that the said trustees, one of whom, Bradt, was an employe of the United Dredging Company, caused to be executed a con-

tract between Ventnor Gardens, Incorporated, and the Dredging Company for the sum of $267,000 for completing the fill of the Ventnor Gardens tract, which consideration included moneys due individually from Frank J. Pedrick and Sons, and which were uncollectible, and which constituted a new liability and further encumbered the property of the corporation.

Deponent is further informed and believes that pursuant to a scheme to further encumber the property of Ventnor Gardens and to dissipate its assets for the benefit of other companies, a nine hundred thousand dollar mortgage to secure a bond issue of a like amount was created with the Atlantic County Trust Company as Trustee and that there was actually issued about $230,000 of said bonds, which were used as collateral security to borrow from various banks in Atlantic City the sum of $155,000, which moneys were used in violation of the trust by the trustees to pay other indebtedness of Frank J. Pedrick and son and not that of Ventnor Gardens, Incorporated.

Deponent further says that on or about August 26, 1927, the trustees publicly abandoned their trust and have refused since that time to perform the same.

Deponent further says that large sums of money are due upon contracts for the sale of lots and that there is no person receiving the said money on behalf of the corporation and that the corporation, Ventnor Gardens, Incorporated, has virtually suspended its business and is not proceeding to complete the development of its property or perform any other function.

Deponent further says that he is informed and believes that Frank J. Pedrick and Son are about

to be adjudicated bankrupt and that a receiver in bankruptcy has heretofore been appointed.

Deponent further says that he is informed and believes that a bill in equity has been filed in the Court of Chancery by the Kwass Realty Company seeking to impress a lien of a judgment upon the property of Ventnor Gardens in the sum of $49,-851.09, although the lands of Ventnor Gardens are not liable therefor and that such company has already filed a *lis pendens* further encumbering the lands of the said company.

Deponent further says that there is due upon lot contracts sufficient moneys to complete the real estate development of Ventnor Gardens provided the same is collected from the lot buyers and applied to that purpose and also to the payment upon their maturity of the mortgages held by deponent.

JOHN SCHUSTER.

Subscribed and sworn to before me this second day of September, A. D. 1927.

ANDREW K. LITTLEFIELD,
Notary Public of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } *ss.*

JOHN A. FITZSIMMONS, 3RD, being duly sworn according to law, upon his oath says that he has read the bill of complaint in the above-stated cause and that he admits that he is the president of Ventnor Gardens, Incorporated, that he is a stockholder to the extent of two shares of stock; that the direction of the affairs of Ventnor Gardens, Incorporated, and all the affairs of the company have in the past

been dominated by the members of the co-partnership of Frank J. Pedrick and Son, to wit, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, and that he has in all things acted as president according to their directions; that subsequent to April 23, 1927, he has acted according to the directions given by the trustees, Bentley H. Pope, John C. Slape and Harlan H. Bradt; that he has been shown the bill of complaint proposed to be filed by counsel on behalf of John Schuster and admits that the matters and things therein stated to be facts are true to the best of his knowledge and belief, except that he doesn't admit that he personally made any representation to John Schuster concerning the priority of the lien of his mortgages over that of any existing liens upon the Ventnor Gardens property.

Deponent further admits that the company has contracts for the sale of lots outstanding aggregating two and a half millions of dollars; that it has liabilities in the form of mortgages aggregating nearly $600,000, besides the nine hundred thousand dollar trust mortgage; that it owes a substantial sum the amount of which deponent does not know, to the United Dredging Company.

Deponent further says that there is due upon the whole tract, including the lots upon which Schuster holds mortgages, taxes aggregating $11,650 which is due and unpaid.

Deponent further says that the company is without funds to continue the development and that unless it receives additional funds it will be unable to perform its contract with its lot purchasers to fill, grade and curb the lots purchased; that if the development was completed there would be due a sum sufficient to pay all the obligations of the company and leave a very large profit, but that the company at this time is unable to proceed and has suspended

its ordinary affairs and has no prospect of resuming its business within a short time and that, unless some action is taken immediately, the assets of the company will be further impaired to the detriment of its creditors, stockholders and lot purchasers.

JOHN A. FITZSIMMONS, 3RD.

Subscribed and sworn to before me this second day of September, A. D. 1927.

ANDREW K. LITTLEFIELD,
Notary Public of New Jersey.

A special meeting of the board of directors of the Ventnor Gardens, Incorporated, was held at Room 35, Real Estate and Law Building, Atlantic City, New Jersey, September 2, 1927, at 6.30 P. M., at which were present John A. Fitzsimmons, 3rd, Dorothy F. Johnson and Helen Cloherty, absent George W. Reynolds.

The president read a copy of a bill which counsel for John Schuster had prepared and informed the president was about to be presented to the Court of Chancery. This petition prays for a receiver for the Ventnor Gardens, Incorporated.

Upon motion of Mr. Fitzsimmons, seconded by Miss Johnson, it was unanimously resolved that the president be directed to forthwith consent to the appointment of a receiver by the Court of Chancery of New Jersey, it being evident that the company has ceased to do business and that it cannot presently resume its business and that it is at this time without sufficient funds to carry on said business, and that the president be further authorized to file an answer admitting the facts contained in the bill of complaint of Mr. Schuster.

I hereby certify that the foregoing is a true copy of a minute passed by the board of directors of Ventnor Gardens, Incorporated, at a special meeting held on September 2, 1927.

HELEN D. CLOHERTY,
Secretary.

Pursuant to a resolution of the board of directors of Ventnor Gardens, Incorporated, I, John A. Fitzsimmons, 3rd, president of Ventnor Gardens, Incorporated, do hereby consent to the appointment of a receiver by the Court of Chancery of New Jersey in a suit instituted by John Schuster against Ventnor Gardens, Incorporated, in which suit a receiver for the company is prayed for; and I further consent, that in the event of suits praying for a receiver being filed by Kwass Realty Company or Richard Bloom, by resolution of the board of directors, to the appointment of such receiver.

JOHN A. FITZSIMMONS, 3RD.

THIS INDENTURE AND AGREEMENT made this Twenty-third day of April, A. D. 1927,

BETWEEN FRANK J. PEDRICK, and LAURA C. PEDRICK, his wife, LEONARD F. PEDRICK and DOROTHY K. PEDRICK, his wife, FRANK CURRAN and HATTIE M. CURRAN, his wife, individually, and the said FRANK J. PEDRICK, LEONARD F. PEDRICK and FRANK CURRAN, co-partners, trading as FRANK J. PEDRICK & SON, parties of the first part, (hereinafter called the "Grantors") AND JOHN C. SLAPE, of Atlantic City, BENTLEY H. POPE, of Trenton, New

Jersey, and HARLAN H. BRADT, of the City of New York, parties of the second part, (hereinafter called the "Trustees"),

WITNESSETH, that the Grantors, for the purpose of securing to the creditors of the said partnership, a distribution of the property and effects of the said partnership, and for the consideration of ONE DOLLAR to them in hand paid by the said Trustees, have and by these presents do grant, bargain, sell, convey, assign, transfer and set over unto the said Trustees, their heirs and assigns, ALL and singular the lands, tenements, hereditaments and real estate, whereof the said Partnership is now seized, or whereof the said Frank J. Pedrick, Laura C. Pedrick, Leonard F. Pedrick, Dorothy K. Pedrick, Frank Curran and Hattie M. Curran, and any other person or persons, is or are now seized or in any way entitled for the use and benefit of the said partnership, wheresoever the same may be situate, together with the appurtenances; and also all and singular the goods and chattels, notes, bonds, corporate stocks, bills and accounts receivable, moneys on hand or in bank, moneys due and to grow due, rights and credits, choses in action, and all other personal property whatsoever belonging to, due or to grow due to the said partnership, or held by or due or to grow due to any of the Grantors or any other person for the use and benefit of the said partnership, wheresoever the same may be; TO HAVE AND TO HOLD the same unto the said Trustees, their heirs and assigns, to their use, benefit and behoof, in trust nevertheless, for and upon the following uses and trusts, viz:

1. The Trustees shall, to the same extent and as fully and completely as if they were the absolute owners of the business, good will and assets of the said partnership, have the sole and exclusive right,

power and authority to sell, convey, transfer, mortgage and pledge any or all of the assets of said partnership, according to their sole judgment and discretion, and to carry on the business of said partnership under its firm name or otherwise.

2. The Trustees shall have full right, power and authority, in the name of the firm or otherwise howsoever, from time to time, as they may deem necessary or advisable, to borrow or otherwise obtain money in such amounts and upon such terms and for such purposes as may to them seem advisable; and in their sole discretion and judgment to sell, mortgage, convey, assign, transfer and pledge any or all of the property hereby conveyed and transferred to said Trustees, as security for the repayment of any money so borrowed or otherwise obtained by said Trustees; and the payment of any loan or loans made to the Trustees or of money otherwise obtained by them shall, in the sole discretion of the Trustees, have priority in payment over all claims, including lien claims, except such claims as are secured by mortgage or other collateral.

3. The Trustees shall have full right, power and authority to readjust, reorganize and recapitalize all or any part of the business, good will and assets of the partnership and of any company or companies, the majority of the stock of which is controlled by the individuals composing the said partnership, by creating a new corporation or corporations to take over such business, good will and assets of said partnership or of said company or companies, and to convey and transfer to such new corporation or corporations all or any of such properties; and the said Trustees shall have full right, power and authority to pay, settle, compound and compromise any and all claims of creditors of said partnership and of any of the several companies above mentioned, by means of such securities of the reorganized or new company or companies and otherwise as in the discretion and judgment of the said Trustees may seem proper.

4. The Trustees shall have full right, power and authority, as funds from the business of said partnership or from such corporations as may be controlled by the said individuals as above mentioned shall become available or shall otherwise become available, to use the same in defraying the proper expenses of the Trustees, including counsel fees for services rendered and to be rendered, and the expenses of administration of every kind, including reasonable compensation for the services of the Trustees, all of which shall be prior in payment to the claims of unsecured creditors.

5. The Trustees shall have full right, power and authority to pay, adjust, settle, compromise and compound any and all claims of creditors, and to adjust, settle, recognize and admit such priorities of claims and rights of creditors as shall be established to their satisfaction; and to pay, settle, adjust, compromise and compound with any lot purchasers of the said partnership or of any of the aforesaid corporations, and to complete any and all sales to such lot purchasers as may be uncompleted, upon such terms of payment and security as to said Trustees may seem wise; and to sell, mortgage, pledge or otherwise dispose of any security or securities which may be given to the said Trustees by any lot purchaser or purchasers or which may otherwise come into the hands of the said Trustees.

6. The said Trustees shall have full right, power and authority to make any contract whatsoever they may deem wise in connection with the admin-

istration of this trust and to alter the terms of any existing contract with the said partnership, or any of the said companies whose stock is controlled by the individuals composing the said partnership, as in their discretion may seem fit.

7. In case of the resignation, death or incapacity of any of the aforesaid Trustees, the remaining Trustees or Trustee shall have the right, power and authority to appoint substitutes or a substitute to fill the vacancy so created and such substitutes or substitute shall have all of the rights and powers of an original Trustee.

8. In the administration of this trust, the action of a majority of the said Trustees shall be controlling.

9. The said Trustees, by the acceptance of this trust, assume no personal obligation or liability to any person whatsoever, except for wilful mismanagement of the trust hereby imposed upon them.

10. All creditors consenting to this agreement covenant and agree to and with the Grantors and the Trustees that they will not prosecute their claims by suit or otherwise or attempt to enforce the collection thereof, except insofar as may be necessary to establish the amounts and priorities of their claims.

11. This agreement and all of the terms thereof shall be liberally construed so as to enable the Trustees to carry out in accordance with their own discretion and judgment the terms of this trust.

12. Any of the Trustees, or any partnership or corporation with which any of the Trustees may be associated shall have the right to deal with the Trustees.

13. Makers, endorsers, guarantors or sureties of notes or obligations of the Grantors or any of them or of any of the corporations controlled by the individuals of the said partnership do hereby covenant and agree that their liability as such makers, endorsers, guarantors or sureties shall in no wise be altered, changed or lessened by any of the terms, conditions and agreements herein contained; but that their liability shall remain the same as if this agreement had not been made.

14. Any creditor who signs a copy of this agreement shall be bound by all of the terms, conditions and covenants thereof.

15. If at any time in the discretion of the Trustees or a majority of them it is found to be impracticable or unfeasible for them to carry out the terms of the trusts imposed upon them by this instrument, then and in such case they shall have the absolute right in their sole discretion and judgment to terminate this agreement and to do all acts and things necessary and advisable to that end, and to make reconveyance to the Grantors or their nominees in writing of the properties and assets remaining in the hands of the said Trustees in the condition in which they then are found to be; and in any event this agreement shall terminate and reconveyance be made within three years from the date hereof.

16. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of all the parties executing this agreement and consenting hereto.

17. The above named Trustees have signed this instrument to signify their acceptance of the trusts thereby imposed.

IN WITNESS WHEREOF, the parties hereto have interchangeably set their hands and seals the day and year first above written. Executed in triplicate.

FRANK J. PEDRICK [SEAL]
LAURA C. PEDRICK [SEAL]
FRANK CURRAN [SEAL]
HATTIE M. CURRAN [SEAL]
LEONARD F. PEDRICK [SEAL]
DOROTHY K. PEDRICK [SEAL]
FRANK J. PEDRICK [SEAL]
LEONARD F. PEDRICK [SEAL]
FRANK CURRAN [SEAL]
Co-partners trading as
Frank J. Pedrick & Son.
& JOHN C. SLAPE [SEAL]
BENTLEY H. POPE [SEAL]
HARLAN H. BRADT [SEAL]

Signed, sealed and delivered
in the presence of
V. C. BRUCKMANN

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } *ss.*

BE IT REMEMBERED that on this twenty-third day of April, A. D. 1927, personally appeared before me, the subscriber, a Notary Public of the State of New Jersey, FRANK J. PEDRICK, LAURA C. PEDRICK, his wife, LEONARD F. PEDRICK, DOROTHY K. PEDRICK, his wife, FRANK CURRAN and HATTIE M. CURRAN, his wife, individually, and FRANK J. PEDRICK, LEONARD F. PEDRICK AND FRANK CURRAN, co-partners trading as FRANK J. PEDRICK & SON, who I am satisfied are the grantors in the within indenture named and I having first made known to them the contents thereof they did thereupon acknowledge

that they signed, sealed and delivered the same as their voluntary act and deed.

All of which is hereby certified.

VALENTINE C. BRUCKMANN
Notary Public for above State and County

We, the subscribers, creditors of the grantors mentioned in the deed whereof the foregoing is a copy, or of some of them, hereby agree to be bound by its terms.

Witness

.... [SEAL]
.... [SEAL]
.... [SEAL]
.... [SEAL]
.... [SEAL]

ORDER APPOINTING RECEIVER TEMPORARILY.

(Filed September 3, 1927.)

IN CHANCERY OF NEW JERSEY.

Between JOHN SCHUSTER, *Complainant,* and VENTNOR GARDENS, INCORPORATED, *et als.*, *Defendants.*	On Bill, &c. Order Appointing Receiver.

This matter being opened to the Court by Emerson Richards, of counsel with the complainant in the above-entitled cause, and upon reading and filing the bill of complaint and the affidavits annexed thereto and the answer of the defendant and the filing of a resolution of the board of directors of the defendant, Ventnor Gardens, Incorporated, consenting to the appointment of a receiver by this Court, and the consent of the president of said company, and the Court having further read and considered the bill of complaint filed by the Kwass Realty Company praying a receiver, and the affidavit thereto annexed, and having heard both applications for a receiver at the same time in the presence of Carlton Godfrey, solicitor of Kwass Realty Company, and it appearing to the Court

that the defendant, Ventnor Gardens, Incorporated, is unable to meet its current obligations or to continue its business with safety to the public or advantage to its stockholders or with safety to the lien of complainant's mortgages and is insolvent and that a receiver for the defendant company should be appointed by this Court to take charge of and administer all of said company's assets and property;

It is thereupon on this third day of September, 1927, ordered, adjudged and decreed as follows:

1. That Max Grossman, of the City of Atlantic City in the State of New Jersey, be and he is hereby appointed receiver of the said defendant, Ventnor Gardens, Incorporated, and of all its assets and property of every character and description wheresoever situate, with full power to demand, sue for, collect and receive and take into his possession all the goods, chattels, rights and credits, money and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said Ventnor Gardens, Incorporated, 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 him 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.

2. And it is further ordered that the said receiver, before entering upon the discharge of his duties, shall take the oath of office prescribed 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 fifty thousand dollars conditioned for the faithful performance of his duties, which said bond shall be approved as to form and security thereof by Wm. M. Clevenger, one of the Special Masters of this Court.

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 situate and of whatsoever it may consist.

4. And it is further ordered that the said defendant corporation, its officers and agents and all persons claiming under it, shall be and they are hereby restrained from interfering with said receiver taking possession of and managing said property.

5. And it is further ordered that the said receiver be and he is hereby authorized and empowered, until the further order of this Court, to conduct and to continue to conduct the business of the said defendant corporation, without interruption, and fulfill the contracts and other indebtedness of said defendant, made by the said defendant, until the 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 purposes aforesaid and to collect and pay all needful agents, and servants and generally to do all acts and things proper or necessary to be done to protect the property and rights of which he is hereby appointed receiver for the benefit of the complainant mortgagee and all other mortgagees like situate who may become parties to these proceedings and likewise for the benefit of the creditors, if any, and the stockholders of the said company, with leave to apply from time to time, whenever necessary and as he may be advised for instructions touching all and singular his rights, duties and liabilities in the premises.

6. And it is further ordered that Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, individually and as co-partners under the partnership of Frank J. Pedrick and Son, be and they are hereby restrained from interfering with said receiver or taking possession of any property belonging to the defendant corporation and they are hereby required, and each of them, to surrender up to such receiver any property now in their hands belonging to said defendant corporation.

7. And it is further ordered that John C. Slape, Bentley H. Pope and Harlan H. Bradt, individually and as trustees for Frank J. Pedrick and Son, be and they are hereby restrained from interfering with said receiver and from taking possession of and managing said defendant corporation's property and they are hereby directed and required to surrender and render up to said receiver any property, money or other thing of value now in their possession or under their control or deposited in any bank or trust company or in any safe deposit vault or other place of security, belonging to said defendant corporation.

9. And it is further ordered that the defendants,

John C. Slape, Bentley H. Pope and Harlan H. Bradt do account for, discover and set forth to the receiver the goods and chattels, rights and credits, money and effects and real estate of every kind and description belonging to the said company which may have come into their hands as trustees or individuals.

10. And it is further ordered that the defendant, Atlantic County Trust Company be and they are hereby restrained from issuing any further bonds pursuant to a certain mortgage trust agreement whereby the said Atlantic County Trust Company is trustee for an issue of nine hundred thousand dollars of bonds secured by a mortgage upon the defendant corporation's property, Ventnor Gardens, Incorporated, or otherwise increasing the liability of said defendant company until the further order of this Court.

11. And it is further ordered that the Kwass Realty Company, complainant in the bill for receiver considered at the same time as the bill filed by John Schuster, be restrained from the further prosecution of its suit against the Ventnor Gardens, Incorporated, except in a proceeding in this Court, until the further order of this Court.

12. And it is further ordered that the creditors and stockholders of the said company shall show cause before the Chancellor, at the Chancery Chambers, in the City of Atlantic City, on the 13th day of September, nineteen hundred twenty-seven, at ten o'clock in the forenoon, why the appointment of the said receiver should not be continued.

13. And it is further ordered that the said receiver shall within four days from the date hereof mail to each of the creditors and stockholders and mortgagees of said defendant company, and other defendants named herein, at their last known place of address, a copy of this order.

E. R. WALKER,
C.

Respectfully advised:
R. H. INGERSOLL,
V. C.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
JOHN SCHUSTER,
Complainant,
and
VENTNOR GARDENS, INCORPORATED, *et als.*,
Defendants.

On Bill, &c.
On Order to Show Cause.

Atlantic City, N. J., September 15, 1927.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:
For Complainant, EMERSON L. RICHARDS, ESQ.;
For Defendants, C. L. COLE, ESQ.; MOORE & BUTLER; CARLTON GODFREY, ESQ.

Mr. Richards: Your Honor, please, this is the return of a rule to show cause why a receiver should not be continued in the case of Schuster v. Ventnor

Gardens, and representing Mr. Schuster, of course, the motion is to continue the receiver.

Mr. Cole: Please, your Honor, I appear for William H. Whittaker, a general creditor, and also for Mr. Steelman, Receiver of Pedrick and Son, a partnership, in bankruptcy. Pedrick and Son owns, according to the bill, ninety per cent of the stock of the Ventnor Gardens and our claim is that, in fact, that no delivery, the bill admits ninety per cent— I also appear for Mrs. Duncan who holds mortgages, as I understand, for I think over a hundred thousand dollars, and also for her husband, T. Parks Duncan, who is a lot owner, if I remember the figures, around fifty thousand dollars. My motion is to vacate the order appointing the receiver and to dismiss the bill on the ground that there is no legal justification for it. Before arguing the motion I would like to call one or two of the directors of the corporation and ask them a few questions.

Mr. Richards: If your Honor please, I object to that. In the first place the objection is to his appearing here for Duncan at all because, while he has not said what the claims of these people are and what their rights are, the fact is that Duncan is a mortgage holder the same as ourselves. This bill was filed on behalf of such mortgage holders as shall come in and contribute to this suit. He hasn't done that. I don't believe Duncan has actually filed a bill to foreclose the mortgages, so that there is nothing due, no election and nothing due to Duncan, therefore he will have no standing here at all. I don't know what this man Whittaker is, except that ——

The Court: He said a general creditor.

Mr. Cole: Yes, sir.

Mr. Richards: ——the bill that Judge Cole has here is dated August twenty-seventh, 1927, and I don't know how they get to be a general creditor or a creditor. My understanding was that there was no creditors of the Ventnor Gardens, that is, general creditors, outside of the various persons who were mortgage holders. I may be mistaken about that, but I concede he has a right here to represent Mr. Steelman, apparently, because Steelman is a defendant named in the bill.

The Court: In a matter of this sort I think it is my duty to hear such testimony as presented and then I will have to rule upon the points as they arise after I hear the testimony. I am considerably in doubt whether Duncan has any rights to appear in an application of this sort, but it is unnecessary at this time to rule upon that point.

Mr. Butler: If your Honor please, I just want to say that I appear here for Mr. Curran, the owner of forty-five per cent of the stock of Ventnor Gardens.

Mr. Godfrey: I wish to appear for Kwass Realty Company, a party to this suit.

John A. Fitzsimmons, Third, sworn.

Direct examination.

By Mr. Cole:

Q. Mr. Fitzsimmons, are you an officer of the Ventnor Gardens, Incorporated?
A. Yes, sir.
Q. And what is your office?
A. I am the president.
Q. Do you know the minute book, familiar with the minute book of the corporation?
A. No, I am not familiar with it, Judge.
Q. Are you familiar with the recent action of the directors consenting to the appointment of a receiver?

Mr. Richards: It is objected to on the ground that the action is in writing and the minutes speak for themselves.

The Court: I will permit it.

A. Yes, I am familiar with that to some extent.
Q. I have been handed a book by a young lady here which says "Ventnor Gardens, Incorporated."
A. Yes, sir.
Q. Will you look at that and say whether that is a minute book of the corporation?

Mr. Richards: That is objected to.

The Court: Sustain the objection. He has testified he doesn't know, not familiar with the book.

HELEN D. CLOHERTY, sworn.

Direct examination.

By Mr. Cole:

Q. Do you hold any office with the Ventnor Gardens, Inc.?
A. I do.
Q. What is your name?
A. Helen Cloherty.
Q. What office do you hold?
A. Secretary and treasurer.
Q. Are you also a director?
A. Yes.
Q. Will you look at this book, which is labelled Ventnor Gardens, Incorporated, and tell me whether that is the minute book of the corporation?
A. Yes, that is the minute book.
Q. Are you familiar with the resolution that is referred to in the bill in this case that was passed by the directors consenting to the appointment of receiver?

Mr. Richards: Objected to on the ground irrelevant, and he hasn't identified the book.

The Court: I will permit it.

A. Yes.
Q. Will you kindly read from the minutes into the record what was said, what is said about that meeting?

Mr. Richards: This is all objected to, if your Honor please, on the ground the whole proceeding

is irregular, that Judge Cole has no right at this time on the return of this rule to go into this subject and it is not divulged yet for what purpose he is going into it. The reason, on the usual return of a rule to show cause is on answering affidavits. Now he isn't doing that. What he is potentially doing is going on a fishing expedition here and I object to it.

The Court: I will hear, you, Judge.

Mr. Cole: What I want to establish and what I believe will be established by the examination of this witness and other directors is that this action taken by them was not their voluntary action but that it was brought about at the solicitation of others in order to get this receivership and then the legal effect of the consent of this corporation may be that we are entitled to show that it is not a good faith transaction on the part of the corporation pretended to be represented by these directors. This bill in a number of places alleges that these directors are merely dummy directors and that is one of the things that I want to establish on the record that they were dummy in this particular transaction.

Mr. Richards: All right, what difference does that make? We are here on a return of a rule to show cause now just the same as if no receiver had been appointed. Therefore any action of their consenting to this receivership now has no further force and effect. Your Honor is dealing with it fresh, so that it don't make any difference what action they took. That is gone and over. As to today your Honor has got to deal with this receiver-

ship as an entirely new proposition and not according to anything they may have done in consenting to the receivership.

The Court: The difficulty is that the hearing of the present day is based, in so far as the complainant's case is concerned, upon the affidavits filed. It is true that the usual method is by answering affidavits, but it may be by oral testimony, which is the method Judge Cole has selected today. He is now only replying to the facts which are now, by reason of the rule, the evidence in the case and as recited in the several affidavits, as I recall it, one of which was that the company against which a receiver was being applied for had consented to the appointment and because of that consent certain notices and times were not needed.

Mr. Richards: If your Honor please, there is no affidavit to that effect. Your Honor is mistaken about that. There was merely filed with the affidavits to the bill a certified copy of the minutes. Now it was upon that certified copy consenting that your Honor had a right under the rules to appoint a receiver pending the return of a rule to show cause but that is over with now and the thing that is now before your Honor is just exactly as if there had been a rule to show cause and we are here under the affidavits attached to the petition and, therefore, it doesn't make any difference whether these people consented to this thing voluntarily or involuntarily or how they did it, because that is over and can't affect your decision in this matter at all, because, supposing they come in here now and say "we do not consent; we refuse to consent," has that got anything to do with appointing a receiver at this time?

The Court: That has nothing to do with the appointment of a receiver at this time but, if it is shown that they never consented, it may be we are not in court at all. That is the reason I am hearing it.

Mr. Cole: That is the reason I am bringing it up.

Mr. Richards: If your Honor please, that is not so because the bill has been filed and we are in court.

The Court: But the rule has not been complied with requiring certain notices, the consent of the insolvent company relieves the necessity of certain notices and of the issuance of the order to show cause within a certain time.

Mr. Richards: The order itself provided for notices to everybody including this company. They have notice now and they are here.

The Court: I will hear the testimony. I can see at the present time only the question of whether we are properly in court in hearing this case. That is the only point I see, although I may be wrong on that.

(Question repeated.)

A. "A special meeting of the directors of the Ventnor Gardens, Incorporated, was held at room 35 Real Estate and Law Building, Atlantic City, New Jersey, September second, 1927 at 6:30 P. M., at which were present John A. Fitzsimmons, third, Dorothy F. Johnson and Helen Cloherty, absent George W. Reynolds the president read a copy of the bill which counsel for John Schuster directed was

about to be presented to the Court. This petition prays for a receiver for the Ventnor Gardens, Incorporated. Upon motion of Mr. Fitzsimmons, seconded by Miss Johnson, was unanimously decided that the president be directed to forthwith consent to the appointment of receiver by the Court of Chancery of New Jersey, it being evident the company has ceased to do business and it is at this time without sufficient funds to carry on said business, and that the president be further authorized to file answer admitting the facts contained in the bill of complaint by Mr. Schuster.

It being represented to the directors that application was about to be made on behalf of the Kwass Realty Company for a receiver and also that an application for receiver is about to be made by Richard Bloom, a stockholder of the company, and it being evident that the company cannot shortly resume its business and that it is financially unable to continue the same, that it is insolvent, the president was directed to consent to the appointment of such a receiver provided application should be made to the Court of Chancery of New Jersey therefor.

There being no further business the meeting adjourned.

Attest:

Helen Cloherty, Secretary."

Q. Was that all done at one meeting?
A. Yes.
Q. Were you present?
A. Yes.
Q. Was that at the office of the company?

Mr. Richards: Object, the minutes speak for themselves.

The Court: Doesn't state in the minutes. It states where it was held but doesn't state whether the office of the company or not.

Q. Was it at the office of the company?
A. No, it wasn't at the office of the company.
Q. Whose office was it?
A. In the office 35 Real Estate and Law Building.
Q. Do you know whose office that is?
A. No.
Q. Did you prepare that minute?

Mr. Richards: That is objected to, immaterial.

The Court: Sustain the objection.

Q. How did you come to attend that meeting?

Mr. Richards: That is objected to as immaterial.

The Court: I will permit it.

A. I was informed of it from the office.
Q. Who informed you?
A. Miss Johnson.
Q. Who?
A. Miss Johnson.
Q. She a director?
A. Yes.
Q. Then you went to the meeting?
A. Yes.
Q. Did somebody present that resolution?
A. Somebody presented it.
Q. Who presented it?
A. Mr. Fitzsimmons.
Q. Who?
A. Mr. Fitzsimmons.

Q. Did anybody else attend the meeting except the directors?

Mr. Richards: That is objected to as immaterial.

The Court: I will permit that.

Q. Was there anbody else there except the directors?
A. Mr. Pedrick.
Q. What?
A. Mr. Pedrick.
Q. Which Mr. Pedrick?
A. Mr. Leonard Pedrick.
Q. Of the firm of Pedrick and Son?
A. Yes.
Q. Anybody else?
A. Mr. Richards, Senator Richards.
Q. Senator Richards?
A. Yes.
Q. Did they take any part at this meeting?
A. No.
Q. What were they doing there, if you know?
A. They were in another office.
Q. What?
A. They were in another office.
Q. Do you know what they were doing there?

Mr. Richards: That is objected to.

The Court: Sustain the objection.

Q. Did they appear, that is either Senator Richards or Mr. Pedrick, during the time that these resolutions were being discussed?
A. No.
Q. Were the resolutions discussed?

A. Among the directors you mean?
Q. Yes.
A. No.
Q. Nobody said anything about them?
A. No.
Q. No discussion at all?
A. No.
Q. How did you know what you were doing if there was no discussion?
A. Mr. Fitzsimmons presented the resolution and it was seconded.
Q. Did you vote on that resolution just because Mr. Fitzsimmons asked you to do it?

Mr. Richards: That is objected to.

Mr. Cole: Certainly goes to the question ——

Mr. Richards: It is a leading question anyhow, he is putting in her mouth what the reason was.

The Court: Yes.

Mr. Cole: She isn't my witness.

Mr. Richards: I don't know whose witness she is. You called her, I didn't.

(Question repeated.)

The Court: Sustain the objection.

Q. Why did you vote on that resolution?

Mr. Richards: That is objected to.

The Court: I will permit that.

Q. If you know, tell me why you voted for that resolution?
A. I have no reason why I should.
Q. What?
A. I don't know any reason why I should.
Q. Well, if you can't think of any reason why you should have voted for the resolution, why did you vote for it?
A. I didn't see any reason for not.
Q. What?
A. I had no reason for not voting.
Q. Was it read before it was voted on?
A. Yes.
Q. Who read it?
A. Mr. Fitzsimmons.
Q. Do you know where he got the resolution?
A. No.
Q. Now do your by-laws provide for notice of a meeting of the board of directors?
A. Yes.
Q. Did they have notice?
A. Sure.
Q. What?
A. Yes.
Q. How did they get it?
A. Over the phone.
Q. Over the phone?
A. Yes.
Q. How much notice are they supposed to have under the by-laws?
A. I don't remember.
Q. What?
A. I don't know offhand how much notice.
Q. What about this director who wasn't there, did he get notice?
A. Yes.
Q. What is his name?

A. Mr. Reynolds.
Q. How did he get it?
A. Over the phone.
Q. Did you give it to him?
A. No.
Q. How do you know he got it?
A. Well, I am not sure that he got the message but he was got in touch with.
Q. Is Mr. Pedrick a director?
A. Mr. Leonard Pedrick?
Q. Yes.
A. No.
Q. Now this bill—how long have you been a director?
A. About a year.
Q. How long has Mr. Fitzsimmons been a director?
A. Over a year, I don't know exactly.
Q. How long has Miss Johnson been a director?
A. Since the company was organized.
Q. What?
A. Since the company was organized.
Q. Who was the other director?
A. George Reynolds.
Q. Now this bill that is filed—by the way did you see this petition?
A. Yes.
Q. When?
A. The day of the meeting.
Q. What?
A. The day of the meeting.
Q. Where did you get it?
A. It was in the office.
Q. How did it get there?
A. I don't know.
Q. Did you read it?
A. I read some of it

Q. Before or after the resolution was passed?
A. After.
Q. After?
A. Yes.
Q. Did you read this part of this petition which said that you and the others were dummy directors?
A. No.
Q. The petition says that you were dummy directors; was that true so far as you were concerned, were you just a dummy director?

Mr. Richards: That is objected to.

The Court: I will permit it.

A. Well, I don't know just what you mean. We were directors and we acted.
Q. I don't either except the petition says that you and the others were dummy directors and you say you read this petition; did you read in here where they were charging you with being a dummy director?
A. I don't remember reading that part in there.
Q. Didn't read that part?
A. No.
Q. Well, how many shares of stock do you own?
A. Two shares.
Q. Were you asked by Mr. Pedrick to pass this resolution?

Mr. Richards: Objected to.

The Court: Sustain the objection.

Q. Were you on a salary with the company?
A. No, not with Ventnor Gardens.

Cross-examination.

By Mr. Richards:

Q. Was there a written waiver of notice of this meeting of the directors signed by all the directors?
A. Except Mr. Reynolds and it was sent to him.
Q. Didn't he sign the waiver of notice as well?
A. I think he did.
Q. Haven't you got the waiver of notice?
A. I don't know.
Q. If you haven't in that book haven't you got it there?
A. Should be in here. There was a waiver of notice signed by the directors.
Q. As a matter of fact, had Mr. Reynolds appeared there prior to the meeting?
A. No.
Q. Didn't he come to the room 35?
A. No.
Q. Do you know whether he said he would be there at the meeting?
A. I don't know whether he said he would or not.
Q. Now did the president of the company read this petition, this bill to the other directors or parts of it?
A. Parts of it.
Q. And tell you what the bill was about?
A. Yes.
Q. And what was proposed to be done?
A. Yes.
Q. And was there a discussion about that?
A. No.
Q. Well, did somebody move that the receivership be consented to?
A. Yes.

Q. And was there anybody present in the room at that time except the directors?

A. Not at the time of the meeting.

Q. After—was that done verbally, that resolution first passed verbally or discussed verbally?

A. Yes.

Q. And then was the resolution put in writing afterwards?

A. Yes.

Q. And passed at the meeting?

A. Yes.

Q. So then there was some considerable time for consideration of this matter by the directors, was there not?

A. Yes.

Q. About how long?

A. Fifteen minutes to a half hour.

Q. Fifteen minutes to a half hour, the session lasted that long?

A. Yes.

Q. Now you were familiar with the affairs of this company, were you not?

A. Yes.

Q. And you knew it was in fact unable to continue its business, didn't you?

A. Yes.

Q. You knew that it was receiving money from the lot holders and not going ahead with the improvements, didn't you?

A. Yes.

Q. You knew that it had not paid the taxes on the property, didn't you?

A. Yes.

Q. And you knew that it had mortgages aggregating over a half million dollars, didn't you ?

A. Yes.

Q. So that you were familiar with all of these facts?

A. Yes.

Q. Was there any need for discussion?

A. No.

Q. Were you in a position to oppose the receivership?

A. If I wanted to.

Q. Would you have considered it wise as a director of this company to have opposed a receivership, appointment of a receiver?

A. No.

By Mr. Cole:

Q. Now you said that there was a verbal discussion; did you talk about it—first did you talk about it?

A. No.

Q. You didn't say anything?

A. No.

Q. Who was it did the discussing?

A. I don't remember who it was.

Q. What?

A. I don't remember who it was.

Q. Well, you said in answer to Senator Richards' question that there was a verbal discussion; now who discussed it and what did he say?

A. No, he asked me if the petition was read and if any ——

Q. No, pardon me just a moment ——

Mr. Richards: I think the lady is right, before you commit her to the verbal discussion of it, go back ——

Q. Now you appear to have said, in answer to

Senator Richards, that there was a verbal discussion about this resolution. Now was that so or not, was there a verbal discussion about this resolution?

A. I didn't answer a question about a verbal discussion.

Q. Then you didn't intend to say that there had bee a verbal discussion, is that correct?

A. No.

Q. Then there was no verbal discussion.

A. No.

Q. But did you think that there ought to have been a receiver in this corporation?

A. Sure.

Q. When did you get that idea that there ought to be a receiver?

A. Well, when the company didn't have enough money to go on.

Q. When was that that you thought the company ought to have a receiver?

A. I don't know exactly when it was.

Q. What action did you take after you thought there ought to be a receiver to have one appointed? What did you do personally?

A. I didn't do anything.

Q. In other words, notwithstanding the fact, that you thought there ought to be a receiver, you did nothing to have one appointed, did you?

A. No.

Q. And you come into the picture by being asked by Mr. Fitzsimmons to attend the meeting, didn't you?

A. Yes.

Q. And that was on the very day this resolution was passed, wasn't it?

A. Yes.

Q. Now what did Mr. Fitzsimmons say to you about this meeting and what was to be done?

A. He called the meeting for the purpose of appointing a receiver for the Ventnor Gardens.

Q. Did he tell you why he wanted a receiver appointed?

A. Yes.

Q. Did he tell you who had asked for the receiver?

A. Yes.

Q. Who did he say?

A. Mr. Schuster.

Q. You say somebody read some of this bill, who read it?

A. Mr. Fitzsimmons.

Q. Did he read about the dummy directors?

A. No.

JOHN A. FITZSIMMONS, 3rd, recalled.

Direct examination.

By Mr. Cole:

Q. Mr. Fitzsimmons, will you tell the Court in your own way, please, how it came about that this meeting was called and this resolution passed?

Mr. Richards: I object to that, if your Honor please. I think we ought to have direct questions and answers so I can object to them and get the benefit of it.

The Court: You are entitled to question and answer.

Q. Did you have anything to do with calling the meeting of the directors which passed this resolution?

Mr. Richards: Thtat is objected to, if your Honor please.

The Court: I will permit it.

Mr. Richards: If your Honor please, I would like a general objection to the whole line of examination for the same reason as in the other case.

The Court: You may have the general objection.

A. No, I did not.
Q. Nothing to do with it at all?
A. I called it at the instance of Miss Johnson, that is all.
Q. Who is Miss Johnson?
A. She is a director of the Ventnor Gardens, Incorporated.
Q. Miss Dorothy Johnson?
A. That is right.
Q. Was that on the very day this meeting was held?
A. That I can't recall. I rather think it was two or three days before.
Q. What did she say to you?
A. She said there was going to be a meeting of Ventnor Gardens, Incorporated, she would call a meeting.
Q. Did she say for what purpose?
A. No, I don't believe she did.
Q. That is a mere director, is that right?
A. I believe so.
Q. You were the president?
A. Yes.
Q. Some one else was secretary?
A. That is right.

Q. And she called the meeting without telling you what it was about, is that correct?
A. I think that is correct, yes.
Q. Now then where did you meet?
A. It was about five-thirty.
Q. Where?
A. In room 35 of the Law Building.
Q. Do you know whose office that is?
A. I think it is Mr. Parsons and several others, I am not sure.
Q. When you got there what was the first action taken?
A. Why I was given the bill of Mr. Schuster and asked to read it over, which I did.
Q. Who gave it to you?
A. Why I think Mr. Pedrick gave it to me.
Q. Where were you when he gave it to you?
A. I was in one of the adjoining rooms of 35, it wasn't exactly room 35.
Q. Who was there when he handed you the bill?
A. No one else was in the room.
Q. You mean the petition, don't you?
A. That is what I mean.
Q. By the way, Mr. Pedrick a director?
A. I don't believe he is.
Q. Tell us what he said to you?
A. He said, "read it over," which I did very hurriedly, because it is rather long, and I got the general import of it, that is about all.
Q. Then what happened?
A. Then I called the meeting and told the directors just about what it was all about.
Q. What did you say to them?
A. I said there had been a petition filed by one John Schuster of Egg Harbor for appointment of a receiver, and then I read them the—first along—not a petition, but a resolution, I put it into sort of

a form of a resolution, and they passed it after some small discussion.

Q. What was the discussion?

A. Well, just wondered what it was all about and I explained a little more fully, that was all.

Q. Who wanted to know what it was about?

A. Why I think it was Miss—I don't know, to tell you the truth, who it was.

Q. Who gave you the resolution?

A. Why it was put—I think it was later put into correct form by Senator Richards.

Q. Where?

A. In one of the rooms there, of 35. It wasn't at the meeting.

Q. Was it finally handed to you?

A. Yes, it was finally handed to me.

Q. By whom?

A. Senator Richards I believe.

Q. Was Mr. Schuster there?

A. That I don't recall. I didn't meet him.

Q. Was Mr. Pedrick there?

A. Yes.

Q. What did Mr. Pedrick say about this?

Mr. Richards: Objected to, if your Honor please.

The Court: I will permit it.

Mr. Richards: Certainly not material, might be anything.

Mr. Cole: I mean about this resolution or receivership, what we are talking about.

A. He didn't say very much about it to me.

Q. Did he say anything?

A. He said, "read it over," that is all.

Q. Did he ask you to pass it?

A. No, I don't believe he did.

Q. Did you read that part of the petition where you are referred to as one of the dummy directors?

A. No, I didn't, I didn't see that.

Q. Why didn't you read that part?

A. I don't know as I seen that.

Q. What is the fact about it, Mr. Fitzsimmons, were you a dummy director or not?

Mr. Richards: That is objected to, if your Honor please.

The Court: A conclusion, I think. I will sustain the objection.

Q. Did you and the other directors direct the affairs of this company or didn't you?

Mr. Richards: I object to that, if your Honor please.

The Court: Sustain the objection.

Q. Is it not a fact that Mr. Leonard Pedrick, who handed you this resolution, dominated and directed the affairs of this corporation?

Mr. Richards: That is objected to.

The Court: Sustain the objection.

Q. Now did you think, at the time this resolution was shown to you, that there ought to be a receiver?

A. Well, I sort of thought there should have been, yes.

Q. When did you reach that conclusion?

A. Well, after the other developments had gone into the hands of a receiver.

Q. When was that, how long before you passed the resolution did you conclude there ought to be a receiver?

Mr Richards: Objected to as immaterial.

The Court: I will permit it.

A. I think it must have been a week or two weeks.

Q. Did you do anything towards procuring the appointment of a receiver?

A. No. No actual work.

Q. Did you suggest to Mr. Pedrick that there ought to be a receiver?

Mr. Richards: That is objected to.

The Court: Sustain the objection.

Q. Mr. Fitzsimmons, you remember signing an affidavit?

A. I believe I did, yes.

Q. Did you read it?

A. Yes.

Q. It says that "the direction of the affairs of Ventnor Gardens, Incorporated and all the affairs of the company have in the past been dominated by the members of the co-partnership of Frank J. Pedrick and Son, to wit, Frank J. Pedrick, Leonard W. Pedrick and Frank Curran, and that he had in all things acted as president according to their directions," is that true?

A. Yes. I think that is true, yes.

Cross-examination.

By Mr. Richards:

Q. Is this also true that subsequent to April 23, 1927, you, that is "he" in this case, "has acted according to directions given him by the trustees, Bentley H. Pope, John C. Slape and Harland H. Bradt."

A. Yes, that is true.

Q. Now at the time of this meeting was there anybody present in the room except the directors of the company?

A. No, there was not.

Q. Who actually handed you the copy of this petition?

A. Mr. Pedrick.

Q. Are you sure that it wasn't myself?

A. I am pretty sure, yes, fairly sure.

Q. Wasn't I present at the moment?

A. I believe you were in the room, yes.

Q. Didn't I talk to you about the petition?

A. You may have explained it a little more fully; it didn't mean very much to me.

Q. Didn't I tell you that I was about to file petition asking for a receiver against the company ——

A. Yes.

Q. —of which you were president?

A. Yes.

Q. And at that time somebody handed you the copy of this petition to read, wasn't that right?

A. Yes.

Q. And after you read it you made the affidavit that has just been mentioned here, wasn't that so?

A. Yes, that is so.

Q. And you called a meeting of the directors?

A. Yes.

Q. And was I present at that meeting?
A. I don't believe you were in the room, no.
Q. Nobody else except the directors, isn't that true?
A. That is right.
Q. The action was of your own volition that you took at that time?
A. Yes, after it had been explained to me, of course.
Q. You say that you had thought for couple of weeks that there should be a receiver appointed?
A. Yes.
Q. Was the fact that Schuster was demanding—about to foreclose these mortgages inducive of your consenting to this receivership?
A. Yes, it was.
Q. Is the company able to proceed with its business?
A. I don't believe it is, no.
Q. Has it any funds to proceed with it?
A. I don't believe it has.
Q. Could it do so with safety to the public?
A. I don't imagine it could, no.
Q. Or to its stockholders or to its creditors?
A. No.

By Mr. Cole:

Q. Mr. Fitzsimmons, we asked you whether this company could do business with safety to the public? What did you think he meant by that?
A. Well, I don't know exactly, I suppose by taking their lot payments and not being able to deliver the ground or real estate properly.
Q. That is what you meant by the public, the people who had bought the lots?
A. Yes.

Q. You said that there was no one in the room except the directors?
A. Yes.
Q. Was there anybody in the adjoining room?
A. Oh, yes, there was Senator Richards and Mr. Pedrick in another suite of the office.
Q. Was the door open or closed?
A. That I don't recall. I believe it was open or half open, partly open.

LEONARD J. PEDRICK, sworn.

Direct examination.

By Mr. Cole:

Q. Are you of the co-partnership of Pedrick and Son?
A. Yes, sir.
Q. Against which an involuntary petition has been filed in bankruptcy?
A. Yes, sir.
Q. When did you first know that somebody wanted the directors of the Ventnor Gardens to pass a resolution consenting to the appointment of a receiver?

Mr. Richards: That is objected to as irrelevant, immaterial and incompetent.

The Court: I will permit it.

A. Why Mr. Schuster was about to file a petition for receiver—what was that question again?

(Question repeated.)

A. When? Some time after I heard of the application that Schuster was to file for a receiver.

Q. Sometime after what?

A. Sometime after I heard of the petition Mr. Schuster was filing asking for a receiver, probably two days.

Q. Why isn't it a fact that the petition for the appointment of a receiver wasn't filed until after this resolution was passed?

A. I knew that Mr. Schuster was going to file a petition.

Q. I am not asking you that; I am asking you whether you don't know that this petition for receiver was not filed until after the resolution was passed?

A. I know that, yes, sir.

Q. Now my other question was, when did you first know about the resolution to have the company's consent?

Mr. Richards: I object as quite immaterial.

The Court: I will permit it.

A. I didn't know of the resolution until right after the meeting of the company passing it.

Q. Who told you?

A. I was in the next room.

Q. What room?

A. In the next room in 35, I think it is, Law Building.

Q. How did you come to be there?

A. I was there with Senator Richards in relation to the Schuster matter.

Q. You mean to say, do you, that you didn't arrive until after this resolution was passed?

A. No, I was there all the time, yes.

Q. That was your object in going, wasn't it, to have these directors to pass this resolution?

Mr. Richards: I object to that, if your Honor please, in the first place it is leading, putting in his mouth a statement. He has a right to ask him what his object was, but he can't put in his mouth the language that he wants.

The Court: Is this witness a deponent in any of the affidavits attached?

Mr. Richards: No, he took no affidavits. This man is entirely a stranger to this thing.

The Court: Sustain the objection.

Mr. Richards: Except he is a defendant.

Q. How did you come to be in the adjoining room when this resolution was passed on the day it was passed?

Mr. Richards: That is objected to, if your Honor please, I can't see it has any relevancy at all.

The Court: I will permit that.

A. I was there with Senator Richards in reference to ——

Q. How did you come to be there? I knew you were there with him, I knew that when I asked you the question; I knew that, but how did you come to be there?

A. Mr. Schuster was to be there and I was to meet him there.

Q. For what purpose?

A. For the purpose of getting some idea what this, what he was going to do in reference to this petition for receiver.

Q. Who told you he was to be there?

A. Senator Richards told me he was to be there.

Q. Did he ask you to go with him or come with him to that room?

A. Who?

Q. Senator Richards?

A. He told me it might be a good idea for me to be there.

Q. For what reason?

A. To see Schuster and see whether he intended to go through with his resolution.

Q. Did you see him?

A. I did see him.

Q. Was he there?

A. He was there.

Q. While you and the Senator were there?

A. Yes, sir.

Q. Was there any discussion about this resolution?

A. No discussion at all about any resolution.

Q. Nothing said about the resolution?

A. No, sir.

Q. You handed that resolution to Mr. Fitzsimmons, didn't you?

A. I did not, handed a petition to Mr. Fitzsimmons.

Q. Who prepared that resolution?

A. I don't know who prepared it. It was done at the meeting of the company, I presume the secretary.

Q. You don't know who prepared it? Did you leave after the resolution had been adopted?

A. After the meeting was over I left, yes.

Q. There wasn't anything else done except to pass the resolution, was there?

A. I wasn't at the meeting; I don't know what all they did.

Q. Did you hear these directors act? Weren't you right in the adjoining room?

A. I was in the adjoining room, yes, sir.

Q. Door or not open?

A. I think it was closed.

Q. Mr. Fitzsimmons did you ask one of these directors to call this meeting for the purpose of passing this resolution?

Mr. Richards: That is objected to.

The Court: I will permit it.

A. No, I didn't.

Q. How did they come to get together, if you know?

A. A meeting was called but there wasn't any, but it wasn't called for any particular purpose at all.

Q. How do you know?

A. Because, as far as I know, there wasn't any idea what was going on, the directors didn't know what was taking up.

Q. The directors didn't know?

A. No.

Q. How do you know they didn't know?

A. As far as I know they didn't know.

Q. In other words they just got there without knowing what they were going to do?

A. They got there to attend a metting, a special meeting.

Q. A special meeting for what?

A. It wasn't—they weren't told to come there for any particular purpose.

Q. You say they didn't; I am asking you how you know? What is the source of your information? You didn't answer that. Suppose I ask you this simple question, didn't you go there that day either with or without Senator Richards knowing that the directors had been called together by you for the purpose of having them pass this resolution consenting to the appointment of a receiver for this corporation?

Mr. Richards: Don't answer that. I object to that because that is putting in the witness' mouth testimony he wants and he can't do it. This is his witness.

The Court: I will permit it.

(Question repearted.)

A. No, I did not.

Q. Did you consent to the appointment of a receiver?

Mr. Richards: Objected to.

A. I had nothing to do with it.

Q. Your co-partnership owns how much of the stock?

A. Ninety per cent.

Q. Who owns the other ten?

A. Richard Bloom.

Q. Is he the actual bona fide owner of that other ten shares?

A. Yes, sir.

Cross-examination.

By Mr. Richards:

Q. Mr. Pedrick, did you see Mr. Bloom there at any time around number 35 Law Building about the time or before or after this meeting?

A. I did.

Q. Do you know whether or not he also knew what was afoot about the filing of this petition?

A. I do.

Q. Now as a matter of fact, I told you that this petition was going to be filed, didn't I?

A. Yes, sir.

Q. Do you remember who asked you to get the directors of Ventnor Gardens present at some convenient place that afternoon? Let me refresh your memory, didn't I ask you to do it?

A. Yes.

Q. Did I tell you why I wanted them?

A. You did.

Q. What did I tell you?

A. You told me that a petition for a receiver to be filed by Mr. Schuster and that there were two others in the wind and that it might be a good idea to call a meeting to have it discussed.

Q. By the directors?

A. By the directors.

Q. For the purpose of determining whether or not they would consent to a receivership, wasn't that right?

A. Yes, sir.

Q. Now wasn't there some place around that office Mr. Carlton Godfrey as well, was he there at any time?

A. Yes.

Q. Did you have any discussion or talk with him

or did you hear him talk with anybody about an application for a receivership by him for another party?

A. I did. By the Kwass Realty Company.

Q. Did you hear anybody else discuss the question of an application for a receivership?

A. There was a rumor, I didn't hear anybody discuss it directly, but I heard it rumored that there was another bunch going to make an application or petition.

Q. Now in what room were you during the time that this meeting was being held by the directors?

A. I was in the room off of the, I don't know what the number of the room is.

Q. Who was in that room at the time this meeting was going on?

A. In the room where I was at?

Q. Yes.

A. There was yourself, Mr. Littlefield and myself.

Q. What was Mr. Littlefield doing?

A. Mr. Littlefield was typeing the petition.

Q. Was he making any noise?

A. Plenty of noise.

Q. Was it possible at that time to hear any discussion that was going on in the next room?

A. I didn't hear any.

Q. Can you tell whether or not the door was closed or open?

A. I don't recall whether it was open or closed. I think it was either closed or partly closed.

Q. Do you know whether or not I talked to Mr. Fitzsimmons and told him what I proposed to do? Did you hear any conversation of that kind?

A. Yes, I did.

Q. Did you see me give him a copy of this petition?

A. I did.

Q. Do you know whether Mr. Littlefield was typeing the petition or something that was to go with the petition at that moment?

A. I couldn't say at that moment, he had two or three things he was working on.

Q. Several things he did do there?

A. Yes.

Q. That you seen him do?

A. Yes.

Q. And this petition was given to Fitzsimmons, is that right?

A. Yes.

Q. Fitzsimmons took it into the next room where the other directors were and held a meeting, wasn't that true?

A. Yes, sir.

Q. Now do you remember whether or not Fitzsimmons informed the sundry who were present what they had done at that meeting?

A. He did after the meeting, I mean as far as—I don't know what went on at the meeting; it was discussed after the meeting was over.

Q. Did you bring any pressure to bear upon these directors to have them vote to have a receiver appointed?

A. I did not.

Q. Did you influence them to do that?

A. I did not.

Q. Did you advise them to do it?

A. I did not.

By Mr. Cole:

Q. Senator Richards had you say that he told you before this resolution was passed, and I think before you met in this room 35, that there were two

others in the wind; just what did he say to you about that?

A. That there were two other applications for a receiver.

Q. For Ventnor Gardens?

A. For Ventnor Gardens, yes, sir.

Q. Did he tell you who they were?

A. One was the Kwass Realty Company, and the other one was—no, he said there was two, not more than two, one was the Kwass and the other, but I did say I had heard a rumor of another group forming to ask for a receiver.

Q. What was this a race to see who should get the first petition filed for a receiver?

A. I don't know that it was, no, sir.

Q. Did he tell you why he wanted this resolution passed?

A. No.

Q. Didn't tell you the object of the resolution?

A. No.

Q. Now didn't he tell you ——

A. What was that question again?

(Question repeated.)

A. No, he didn't.

Q. Didn't explain it to you at all?

A. No.

Q. And you didn't know why he wanted it passed?

A. I am not a lawyer; I couldn't tell what the object of it was.

Q. Didn't he tell you that he wanted this resolution passed so that he could have the consent of the corporation to this petition so that there would be an immediate receiver appointed and get ahead of the other two that were in the wind?

A. No, he didn't.

Q. Didn't say anything like that at all?

A. No, sir.

Q. What were you doing there, Mr. Pedrick?

A. I was simply there to see what Schuster was going to do.

Q. You already knew he had filed a bill to foreclose the mortgage, didn't you?

A. No, I didn't. I didn't know until that afternoon that he was going to file a petition.

Q. At all events, Mr. Pedrick, you didn't go there of your own motion, did you?

A. I would say I did, yes.

Q. How did you know there was going to be a meeting?

A. Well, Senator Richards was to be there with Mr. Schuster and I was to meet him there.

Q. All right; now Mr. Curran is a member of your co-partnership, isn't he?

A. Yes, sir.

Q. Owns forty-five per cent of the stock?

A. Yes, sir.

Q. Did you ask him to be present at this meeting?

A. No, sir.

Q. Were you anxious to have a receiver appointed for this corporation?

A. I thought it was the best thing for it.

Q. Were you anxious to have it?

Mr. Richards: Objected to.

Mr. Cole: All right. That is all. That is all the proof I care to offer.

Mr. Cole: Please your Honor, I want to be perfectly frank. I am not sure I understand this bill but I am going to discuss it from the standpoint of what I do understand. This appears to be a bill by

a mortgagee who says that he is filing or has filed a bill to foreclose a number of mortgages and that it is on behalf of himself and such other similar mortgage holders who shall come and contribute to the expense of this suit, and there is a prayer for a broad receivership and the order that appointed the receiver is as broad as the prayer.

Now I don't know of any statute nor do I know of any case that permits a general receiver with the broad statutory powers by a mere mortgage holder and I point out especially here that there is nothing in Mr. Schuster's affidavit which says that his mortgage is imperilled. There is no pretence that this corporation is insolvent, no suggestion it is, and there is nothing in Mr. Schuster's affidavit which says that his mortgage isn't fully secured. He doesn't say that the land that is covered by his mortgage is not ample to pay the mortgage debt. So that, coming in as a mere mortgage holder, without any suggestion that his mortgage is imperilled, he has had a receiver appointed and asks that it be continued with broad statutory powers.

Now the statute limits such a receivership, as I understand it, to a creditor or a stockholder. Now it is a rather singular thing that apparently Mr. Schuster doesn't attempt here to have a stockholder help him, maybe he couldn't because of the receiver in bankruptcy, although Mr. Bloom owns ten shares, according to Mr. Pedrick, a bona fide holder, and could have joined in this bill as a stockholder and probably made it a good bill.

Mr. Schuster isn't a creditor. I thought possibly we might spell out of this bill that he was a creditor, but you can't do that. First of all I say this company is not insolvent, no pretence that it is, and he not a creditor because he would have no claim to make against this corporation until he exhausted

the security under the statute, just the same as if it were against an individual, he couldn't ask the individual to pay the debt until he took the steps provided by the statute, which is to foreclose the mortgage. So that I do not understand the theory of this bill, frankly. Merely because this corporation may be doing something that Mr. Schuster doesn't think is good judgment or may be doing something to dissipate its assets is not enough. He must in some way be imperilled and there is no suggestion here that he is imperilled.

Now if he were asking for a receiver for his mortgaged premises, there would be no doubt, I think, about his right to have it upon perhaps the showing he has made in this bill, but he is not asking for that. This is not a case where there is anything to receive. This is all unimproved property.

So that it seems to me he is not a creditor, he is not a stockholder and that the statute limits the right to those two to file this bill. He is nothing in the world but a mortgagee with security and, so far as the bill shows, amply secured, and I point out there is nothing in the affidavit to show how he comes to be a creditor. He is not a stockholder or that his mortgage is not perfectly good. Now I think that is enough to see your Honor has the point.

Now I come to the question of the bona fides of this bill and, of course, my attack is purely upon the directors. I assume that the object in having the directors vote or consent to the receiver was to avoid the necessity of notice under the statute. The statute, as it is in the books, permitted the Court of Chancery to appoint a receiver on the filing of the bill or a petition without notice to the corporation and the Court of Appeals said that act, to that extent, was unconstitutional and then, as I recall

the history of it, the rule provides in such a case—I think I am right about this—your Honor may appoint a receiver provided the corporation consent. Now, of course, that always contemplates good faith. This court can't be imposed upon and my proposal is, your Honor, or proposition, that this Court has been imposed upon by these directors. This petition says they are dummy directors. They never did anything except what somebody told them to do. There never was any intelligent, voluntary action upon their part. First they were dominated by Pedrick, according to the bill, and second, dominated by these trustees, and they did not meet voluntarily. Two of them say "we thought there ought to be a receiver." They took no action. It wasn't until Schuster or Pedrick, if you please, came into the picture, and urged them to hold that meeting ——

Mr. Richards: If your Honor please, there is no such evidence.

Mr. Cole: No such evidence as what?

Mr. Richards: Your own witness denied that. He was your witness.

Mr. Cole: All right. I didn't think he was my witness. I called him.

Mr. Richards: I don't want to interrupt, but where is the good faith? Judge Cole puts a man on the stand and then proceeds ——

The Court: Let Judge Cole proceed with his argument.

Mr. Cole: I have no objection to these interruptions. I enjoy them.

My contention is that when that record was read that these directors did not get together voluntarily, they did not know what they were to do until they got there and it wasn't until after they got there that they got this resolution either prepared by Mr. Pedrick or Senator Richards, and they are urged to pass this resolution to be ahead of Mr. Godfrey or some other. That is the story. If that is good faith; if that is not an imposition on the court, of course I don't know.

But, independent of that, it does seem to me there is absolutely no justification for the contenuation of this receiver on the ground there is no right in the law to have this receivership continued, and I tell your Honor I am here protesting in behalf of a creditor—no creditor filed this bill—I am here on behalf of the receiver who represents ninety per cent of the stock and the other ten per cent they didn't get, and I am here on behalf of a lot owner and mortgagee representing over one hundred and fifty thousand dollars. Mr. Schuster has about thirty some odd thousand dollars and wants to put this company in the hands of the receiver.

One word more while I am on my feet, if, notwithstanding what I say, your Honor thinks a receiver ought to be appointed, I represent quite a number of general creditors who come in under the bankruptcy if that goes through and I am anxious to save something for the general creditors. I am anxious that this estate shall not be frittered away in litigation and counsel fees and receivers' fees. Most of my clients are people that can't afford to lose their money and it is important that the expense of this thing be kept down. Now we have the Winchester Development in the hands of a receiver. We have

the Pedrick Company in the hands of a receiver. We presently have this company in the hands of a receiver. We have Pedrick and Son in bankruptcy. Now it seems to me that for economy of administration, that for continuity of administration, that for wise administration, there should be one receiver handle all these companies. Mr. Godfrey's bill asserts that Mr. Pedrick managed all these companies as if they were one, and I think that is the truth. I think in any court it can be demonstrated after all this whole thing was Pedrick. He took money from one place in to another and it will take a magician, doubtless, to unscramble the egg, just as Vice Chancellor Berry said when the application was made on behalf of the Kwass Realty on behalf of the Winchester Development Company, and Vice Chancellor Berry then suggested, opposing Mr. Godfrey's motion for independent receiver, Vice Chancellor Berry then appointed Mr. Riggins receiver for the Pedrick Built Homes. He was insisting, Mr. Godfrey, for an independent reciever for Winchester Development Company. Vice Chancellor Berry says "I won't do it. What do you want, four receivers to unscramble the eggs?" And he appointed Mr. Riggins receiver in connection with that and he suggested there the situation looked as though perhaps he would have to be a receiver for all these companies before they were through, his idea should be one rather than four. It seems to me that is a sensible situation. It goes to economy, and while I am on my feet, I want to propose to your Honor, if your Honor finds—and I want your Honor to understand I am sincerely and earnestly objecting to this receiver—but if there must be one, I think it ought to be Mr. Riggins so he will be the one receiver for these three companies.

Mr. Richards: If your Honor pleases, we might take these things in their reverse order. Of all the things that there should be, there shouldn't be one receiver for all these companies. While I had nothing to do with the other two companies, I think Vice Chancellor Berry was absolutely wrong in appointing one receiver for those two companies because it is going to be demonstrated, when your Honor begins to hear these cases, that their interests are not the same, that they are antagonistic and that in the case of all four of these companies their interests are entirely divergent. There ought not to be in any case a receivership, one receiver for all four companies, for this reason, it will appear when we get into this thing and your Honor gets to know more about it, that money has been taken from one corporation, probably illegally, without any right, and given over to another corporation. Now is the receiver going to be in position to sue himself to determine whether or not that was illegally taken? I will give your Honor an illustration of it, and it will develop that about a million dollars worth of securities of the Ventnor Gardens Company were used to secure the debt of the Winchester Development Company I think it is, isn't it, Mr. Godfrey?

Mr. Godfrey: Million dollar assets of the Winchester Development Company.

Mr. Richards: And that there is a resolution on the books of Ventnor Gardens that owing money to the Winchester Development it secured that debt by assigning to the Winchester Development Company this million dollars' worth of contracts and that thereafter the Winchester Development Company, to secure a debt of its own, took this collateral and secured its own debt with the collateral of the

Ventnor Gardens Corporation, and, as a matter of fact, and in truth there never was any debt between the Winchester Development Company and the Ventnor Gardens Company. Those securities rightfully belong to the receiver of the Ventnor Gardens Company at this moment. That is a matter that will undoubtedly have to be brought before your Honor to be unravelled.

Now would your Honor want to have the same receiver in both cases with a million dollars worth of securities involved and could the receiver be expected to be on both sides of that same question? Could he support the claims of the creditors of the Winchester Development Company and also the Ventnor Gardens Company? Clearly he couldn't.

Now Judge Cole says this thing was a race between several different people to get a receiver and that this meeting of the board of directors that consented to it was not done in good faith. Now your Honor will remember when the application for the receiver was made by two of the people who had a right to make it at the same time, the Kwass Realty Company, represented by Mr. Godfrey, and by myself, that we came to your Honor together. Certainly there was no race in that.

Now Judge Cole has made these people his witnesses. He put them on the stand. Upon examination they declared that they thought a receiver should be appointed, and why not? This company had ceased to do business. They weren't attending to its affairs. It owed, according to the bill, in mortgages alone, over six hundred thousand dollars and had another nine hundred thousand dollar mortgage back of all that. It had obligations to some seven hundred lot owners with whom it had contracts and it wasn't proceeding to do business. It wasn't doing business. Under those circumstances it seems to me it was the duty of these directors to, on their own motion, apply for a receiver. They didn't do it until they were pushed to the wall by the Schuster petition and then they consented to it and the evidence is that their meeting was not attended by anybody, that I asked this meeting be called, that I went there and showed them this bill and told them I was applying for a receiver and did ask them to consent to it and I think that was a perfectly proper thing to do, certainly within my rights in representing Mr. Schuster.

Now then, my friend says that he doesn't understand the theory of this bill. It is very largely because he hasn't read the bill. He has had the bill now from fourteen to fifteen days and very clearly he hasn't read the bill because the bill sets up that Schuster loaned this company thirty-three thousand dollars, that he took as security for his thirty-three thousand dollars twenty-two bonds and mortgages, that at the time he loaned the money and took this security it was represented to him to be a first lien upon this property; that when he went to have it recorded and after he had loaned the money he discovered mortgages aggregating over five hundred thousand dollars that were prior liens to his lien and that he didn't have a first mortgage upon this property. This bill also shows this property was meadow land, that it was being filled in, that, of course, there was no security for his money whatsoever or, for that matter, for the other mortgage holders unless it was filled in and had a value and that they were not proceeding with the fill, that the company had suspended its operations and, therefore, that he had no security whatsoever for his loan. So that the theory of this bill is that Schuster was defrauded out of his money by the representations made to him and that, therefore, he has a

right to a general receiver because, obviously, a receiver for these scattered lots through this whole development would be absolutely of no use to him at all. That wouldn't gain him anything and, therefore, as a general creditor—because he is a general creditor by reason of the fraud that was practiced upon him—and by reason of the fact when these mortgages are foreclosed they will have no value and that there will be nothing realized upon them, all that he will get will be whatever security there is in the bond that went with them, that therefore we were entitled to a general receiver.

Now that is the theory of the bill and there is certainly nothing that would prevent your Honor, as a general equity proposition, that would permit you to not take hold of a property that was partly encumbered by a mortgage and secure the mortgage.

On the other hand Judge Cole does not come here with one bit of proof, not in the way of an affidavit or any other proof, that this company is not insolvent. He simply says he doesn't want a receiver, but he doesn't say why he doesn't want a receiver. The testimony before your Honor today by these directors was that this company could not safely transact business with safety to its stockholders, to its creditors or, as is said, to the general public and by general public it was explained it meant the contract holders or lot holders of which in the bill there are seven hundred. The affidavits with the bill show that this company has suspended its ordinary business and that is not denied. Under those circumstances what is to be done? Is this company to be left absolutely without a head? Its directors certainly are not directing its affairs. They are not taking any active interest in it and it is not denied that they are not. Under those circumstances

what is this court to do? Certainly somebody has got to take possession of its property and do something with it and conserve it so that in the absence of any other reason and upon the clear proof that the consent was the voluntary act of the directors, I believe we should have an order continuing the receiver.

Mr. Cole: Just one word. I want to suggest this, the creditors and stockholders are the ones to complain in the situation in which counsel finds this company. Secondly, I ask your Honor, if you haven't already done it, to read the bill and affidavit and see how much support there is to the contention that this company is in distress. Probably there are a great many averments about mortgages, etc., but there is nothing in there about how anybody is going to be hurt and your Honor certainly can't assume, because there is a confusion of mortgages, this company is insolvent and it can't assume that this man won't get his money.

Mr. Butler: If your Honor please, we represent Mr. Curran, the owner of forty-five per cent of the stock of this corporation, and I want to say we concur fully in what Judge Cole has said as to the facts, particularly that a receiver should not be appointed at all, and particularly want to emphasize the fact that the consent of these directors was not in good faith, it wasn't a real consent.

However, if your Honor, notwithstanding these arguments, thinks a receiver should be appointed, we very earnestly urge your Honor to appoint as receiver the same person who is receiver of the other corporations on the grounds that the assets of all of them would be conserved and it would be benefi-

cial to the creditors, stockholders and everyone concerned.

The Court: Is there a mutuality of interest in all these companies that the receiver could or would there be any conflict between any of these companies?

Mr. Cole: Please your Honor, he is an officer of the court.

The Court: I know, but he is not expected to decide litigious matters. Of course, the question of dividing funds an officer of the court can do it, but are these interests such that it can be determined by a receiver? I will hear your view on that matter, Judge Cole and Mr. Butler.

Mr. Richards: I will give you one illustration: isn't it true, Mr. Butler, that Winchester Gardens at the present time has official possession of a million dollars worth of these contracts belonging to the Ventnor Gardens?

Mr. Butler: I am not prepared to say.

Mr. Richards: If you don't know, then why do you say to the Court that there is a mutuality of interest?

Mr. Butler: I say, if your Honor please, that in my judgment, and representing Mr. Curran, that it is our judgment that the interests of these corporations would be conserved and it would be for their better interest to have one receiver. I am not on the witness stand and I am not prepared to answer Senator Richard's question in that respect.

Mr. Godfrey: Your Honor please, before the discussion is over, I wish to be heard as a party in interest. I am representing a defendant in this case. Now in the first place, I can't see how Judge Cole can come before your Honor in good faith today and oppose a receiver when only a couple of weeks ago he made the first application that put the Pedrick corporations in legal custody by putting the Pedricks themselves in bankruptcy. That started the ball rolling. Then the corporations had to look after themselves. There was no discussion. There was under forclosure at that time a hundred such foreclosures against property of the Pedrick corporation. Their property was in these corporations. Their assets were in these corporations. Now your Honor has heard the testimony here today and on that alone, on the testimony here alone today, sworn testimony, it certainly shows that a receiver should be appointed. Do you tell me that the witnesses here are an exhibition of that degree of character and control which directors ought to give corporations?

And if it isn't, then they were mismanaged and it is the Court's duty to appoint a receiver in case of mismanaged corporations just the same as Vice Chancellor Berry said it was when he heard the second application for receiver and after he had heard a good deal of the same kind of affidavits, same kind of testimony, he said that if the application was here today he would himself appoint a receiver for the other corporations. Now there was his expression after a full argument, I wouldn't even mention this matter before the Court except that Judge Cole did bring the case before Vice Chancellor Berry before this Court in his argument. From that very fact there ought to be a receiver.

Let's concede them that there should be a receiver—I can't dispute it, neither do they; nobody can. There is nobody today controlling those assets and the mortgages are going on and being foreclosed to the extent of 106 I know of two or three weeks ago filed. If it had not been for action taken by myself in protection of this property a large part of the assets of these Pedrick organizations would have been already dissipated and beyond that the liabilities built up by deficiency claims upon these foreclosures.

Now there must be a receiver to protect these interests or there won't be anything for creditors, not a dollar. You put up and let these foreclosures go on today and you will see happening again exactly what you saw this afternoon at two o'clock when three or four more properties of the Pedrick outfit was sold at Sheriff sale where thousands of dollars of debt was due on bids of one hundred dollars. That is what you will see if you don't have receivers and deficiency judgment, bidding in the property, getting the property and then a claim against the assets for the deficiency judgments representing nearly the entire amount. Now it is in that condition and it can only be protected by a receiver and we shouldn't be looking for technicalities to prevent it. We should be together asking for a receiver and a receiver that will protect the assets of this company.

Now tell me how honestly any one receiver can represent these various corporations when in one corporation they take the assets, the trustees take the assets, the very trustees that held the title and control of this property for all these corporations until it was taken out of their hands by the bankruptcy proceedings at the instance of Judge Cole,

when those same men, who were trustees, had no trouble in getting two hundred and fifty thousand to pay Dobbs on a mortgage, seventy thousand dollars to pay another creditor on another corporation, when they got nothing for it, and ten or twenty thousand to somebody else, and yet couldn't get the money to pay the interest on little bits of mortgages which represent the real assets of the company and let them go on to be foreclosed, filing no answers to the foreclosure proceedings, mortgages by the dozens defensible and yet doing nothing to save the assets. If there ever was a case in this world where a receiver, was necessary, and absolutely disinterested receivers, having no connection with any other corporation, so that each corporation can protect its own property.

Now there are the assets of the Winchester Company, the proceeds of the mortgages was invested in the development, purchase and development of the property of the corporation now before you. Now if you have one receiver what is going to happen to that? What are you going to do with it? Can the receiver for this property be receiver for the Winchester property and be fair to each? He can't. He can't be on both sides of the question any more than counsel can. The matter has got to be taken into illustration to the court and properly thought out from the standpoint of each corporation. My judgment of the matter I urged before Vive Chancellor Berry but he differed. I have got no criticism. He had a right to differ, but I am merely illustrating what I believe to be a fact and I am giving your Honor the facts as I found them and I believe that if you have a good independent corporation receiver for each of these corporations, that the creditors will receive many times more, maybe some of the corporations would come out in full, but

if you don't, I doubt if any creditor will get one cent. That is my judgment of the situation and the reasons for it.

Mr. Richards: I might give your Honor just another illustration why there should not be a receiver for all of these corporations. A creditor to the extent of seventy thousand dollars of one of these corporations, not the Ventnor Gardens, was paid by the trustees to the extent of seventy thousand dollars out of money that was realized out of assets of Ventnor Gardens. Now if there is going to be one receiver how in the world is that receiver going to recover that money? Is he going to sue himself to get it back? He is going to do that for somebody.

Mr. Cole: May I know who got the seventy thousand?

Mr. Richards: Seventy thousand and the money raised on the Ventnor Gardens property. We will be able to show that.

The Court: I will follow Judge Cole's suggestion and examine the bill. That I will do tomorrow morning.

Mr. Godfrey: May I ask your Honor, please, before you continue, if your Honor has any doubt upon the question of the receiver or who the receiver should be that the case be continued and further testimony presented and considered by the court?

The Court: I will continue the case until tomorrow afternoon at two o'clock with the understanding, of course, no one need to come and, if necessary continue it to a later period. It will only be done to keep the continuity of the cause.

ORDER.

(Filed Oct. 17, 1927.)

IN CHANCERY OF NEW JERSEY.

Between JOHN SCHUSTER, *Complainant*, and VENTNOR GARDENS, INCORPORATED, *et als.*, *Defendants.*	On Bill, &c. Order.

This matter being opened to the Court by Emerson L. Richards, of counsel with complainant in the above entitled cause, and upon the return of an order to show cause why Max Grossman, heretofore appointed receiver of Ventnor Gardens, Inc., should not be continued, and in the presence of Clarence L. Cole, Esq., representing a creditor, and Hiram Steelman, as receiver for Frank J. Pedrick & Son, and James Butler, of Moore & Butler, representing Frank Curran, and testimony having been taken in open court in behalf of some of the defendants opposing the appointment of a receiver; and the president of the said Ventnor Gardens, Inc., and two of the directors of the said company having appeared, and the president under oath having testified that

the company cannot continue its business with safety to the public or of its creditors or stockholders; and it appearing to the Court that the defendant, Ventnor Gardens, Inc., is unable to meet its current obligations or to continue its business with safety to the public or advantage to its stockholders, or with safety to the lien of complainants' mortgages, and a receiver for the defendant company should be appointed by this Court to take charge of and administer all of said defendant company's assets and property, and it further appearing that due notice of the order to show cause was served upon the officers of Ventnor Gardens, Inc., and upon all other creditors and mortgagees of said defendant company, and there being no good reason shown why the receiver should not be continued;

It is, thereupon, on this 17th day of October, 1927, ordered, adjudged and decreed as follows:

1. That Max Grossman, of the City of Atlantic City, in the State of New Jersey, be and he is hereby appointed receiver of the said defendant, Ventnor Gardens, Inc., and of all its assets and property of every character and description wheresoever situate, with full power to demand, sue for, collect and receive and take into his possession all the goods, chattels, rights and credits, money and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said Ventnor Gardens, Inc., or to which it may be entitled, and to do and perform all the duties imposed upon him and required by law, or by this order, or the further order of this Court.

2. And it is further ordered that the said receiver before entering upon the discharge of his duties,

shall take the oath of office prescribed 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 fifty thousand ($50,000.00) dollars conditioned for the faithful performance of his duties, which said bond shall be approved as to form and security thereof by William M. Clevenger, one of the Special Masters of this court.

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.

4. And it is further ordered that the said defendant corporation, its officers and agents and all persons claiming under it, shall be and they are hereby restrained from interfering with said receiver taking possession of and managing said property.

5. And it is further ordered that the said receiver be and he is hereby authorized and empowered, until the further order of this Court, to conduct and to continue to conduct the business of the said defendant corporation, without interruption, and fulfill the contracts and other indebtedness of said defendant, made by the said defendant, until the further order in the premises, and to 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 purposes aforesaid and to collect and pay all needful agents and servants and generally to do all acts and things proper or necessary to be done to protect the property and rights of which he is here-

by appointed receiver for the benefit of the complainant mortgagee and all other mortgagees like situate who may become parties to these proceedings and likewise for the benefit of the creditors, if any, and the stockholders of the said company, with leave to apply from time to time, whenever necessary and as he may be advised for instructions touching all and singular his rights, duties and liabilities in the premises.

6. And it is further ordered that Frank J. Pedrick, Leonard J. Pedrick and Frank Curran, individually and as co-partners under the partnership of Frank J. Pedrick & Son, be and they are hereby restrained from interfering with said receiver or taking possession of any property belonging to the defendant corporation and they are hereby required, and each of them, to surrender up to such receiver any property now in their hands belonging to said defendant corporation.

7. And it is further ordered that John C. Slape, Bentley H. Pope and Harlan H. Bradt, individually and as trustees for Frank J. Pedrick & Son, be and they are hereby restrained from interfering with said receiver and from taking possession of and managing said defendant corporation's property and they are hereby directed and required to surrender and render up to said receiver any property, money, or other things of value now in their possession or under their control or deposited in any bank or trust company or in any safe deposit vault or other place of security, belonging to said defendant corporation.

8. And it is further ordered that the defendants,

John C. Slape, Bentley H. Pope and Harlan H. Bradt do account for, discover and set forth to the receiver the goods and chattels, rights and credits, money and effects and real estate of every kind and description belonging to the said company which may have come into their hands as trustees or individuals.

9. And it is further ordered that the defendant, Atlantic County Trust Company be and they are hereby restrained from issuing any further bonds pursuant to a certain mortgage trust agreement whereby the said Atlantic County Trust Company is trustee for an issue of nine hundred thousand dollars of bonds secured by a mortgage upon the defendant corporation's property, Ventnor Gardens, Inc., or otherwise increasing the liability of said defendant company until the further order of this Court.

10. And it is further ordered that the Kwass Realty Company, complainant in the bill for receiver considered at the same time as the bill filed by John Schuster, be restrained from the further prosecution of its suit against the Ventnor Gardens, Inc., except in a proceeding in this Court, until the further order of this Court.

E. R. WALKER,
C.

R. H. INGERSOLL,
V. C.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between JOHN SCHUSTER, *Complainant,* and VENTNOR GARDENS, INC., *et als.,* *Defendants.*	On Petition to Make Appointment of Receiver Permanent. Conclusions.

THESE CONCLUSIONS ARE NOT TO BE PUBLISHED IN THE OFFICIAL OR UNOFFICIAL REPORTS.

MR. EMERSON RICHARDS, for the complainant.
MR. CLARENCE L. COLE, SR., for a creditor.

INGERSOLL, V. C.

The business of this company is being conducted in such manner that this Court, under its inherent powers, would be justified in appointing a receiver. *Morse v. Metropolitan Steamship Co.*, 88 N. J. Eq. 325.

The petitioner comes within the term "creditor," and is entitled to be heard as such. *Hooper v. Basic Co.*, 72 N. J. Eq. 426; 63 N. J. Eq. 107.

The temporary receiver will be made permanent.

AMENDED NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between JOHN SCHUSTER, *Complainant,* and VENTNOR GARDENS, INCORPORATED, *et als.,* *Defendants.*	On Bill, &c. Amended Notice of Appeal.

To Emerson L. Richards, Esq., Solicitor for Complainant:

The defendants, Hiram Steelman, trustee in bankruptcy for Frank J. Pedrick, and others, individually and trading as Frank J. Pedrick & Son, Margaret Walsh Duncan, property owner, and William H. Whittaker, a creditor, hereby appeal from the order made by his Honor Edwin Robert Walker as advised by Robert H. Ingersoll, Vice Chancellor, in the above entitled cause on the 17th day of October, nineteen hundred and twenty-seven, and from the whole and every part thereof to the Court of

Errors and Appeals in the last resort in all causes. Dated November 15, 1927.

COLE & COLE,
Solicitors for and of Counsel with Defendants Hiram Steelman, Trustee, &c., Margaret Walsh Duncan and Wm. H. Whittaker.

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

C. L. COLE,
Counsel for Defendants Hiram Steelman, Trustee, &c., Margaret Walsh Duncan and Wm. H. Whittaker.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JOHN SCHUSTER, *Complainant-Respondent,* and VENTNOR GARDENS, INC., *et al.,* *Defendants-Appellants.*	On Appeal from Chancery. Petition of Appeal.

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

The petition of Hiram Steelman, trustee in bankruptcy for Frank J. Pedrick, and others, individually and trading as Frank J. Pedrick & Son, Margaret Walsh Duncan, property owner, and William H. Whittaker, a creditor, the appellants in the above entitled cause, respectfully show that:

1. Petitioners find themselves by a final order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, as advised by his Honor, Robert H. Ingersoll, Vice Chancellor, bearing date the 17th day of October, 1927, in a certain cause in said Court of Chancery wherein the said John Schuster was complainant and the said Ventnor Gardens, Incorporated,

and others were defendants, in this respect, to wit, that the said order adjudges that the defendant, Ventnor Gardens, Inc., should have a receiver appointed to take charge of and administer all of said defendant company's assets and property.

And petitioners' appeal from the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the Court was without jurisdiction under the law and unwarranted under the facts in making the order.

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

COLE & COLE,
Solicitors for and of Counsel with Appellants Hiram Steelman, Trustee, &c., Margaret Walsh Duncan and Wm. H. Whittaker.

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New Jersey Court of Errors and Appeals

Between
JOHN SHUSTER,
Complainant-Respondent,
and
VENTNOR GARDENS, INC., *et al.,*
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF FOR APPELLANTS.

STATEMENT.

Complainant filed the ordinary bill to foreclose a mortgage covering a number of lots comprised in a large area owned by Ventnor Gardens, Inc. Shortly after the filing of the bill a petition or bill (it has the appearance of both), was filed, and prayed for the appointment of a general receiver, and not for a limited receivership, for the collection of rents of the mortgaged premises. The complainant was neither a creditor nor a stockholder of the corporation. The petition or bill does not allege insolvency. As a part of the petition or bill there is a copy of

a resolution passed by the directors, consenting to the appointment of a receiver. A receiver was appointed upon the filing of the bill and later the appointment was made permanent on the return of an order to show cause, and after testimony and objection by a creditor, stockholder and lot owner, who appealed. The objection before the Vice-Chancellor was that the action of the directors in attempting to assist the complainant was in bad faith, that the fact did not bring the case within the statute authorizing the appointment of a general receiver, nor within the broad equity powers of the Court.

ARGUMENT.

THE COURT OF CHANCERY WAS WITHOUT JURISDICTION TO APPOINT A GENERAL RECEIVER.

The complainant is neither a stockholder nor a creditor. The bill does not allege insolvency and the Vice-Chancellor does not find that there is insolvency. The order appointing the receiver was not justified by him under the broad equity power of the Court and the cases which he cites are referable to that power. The bill does not allege that the business of the company is suspended or that the mortgaged premises are not a sufficient security for complainant's debts. There are certain allegations of fraud in the inception of the debt, and allegations of indifference on the part of the directors, but no averment of injury likely to flow to the complainant, or of the dissipation of the assets of the corporation.

That the appointment cannot be justified under the statute is clear by *Aldrich v. Union Bag,* 81 Equity 244; *Atlantic Trust v. Consolidated, &c.,* 49 Equity 402; *Greenbaum v. Lafayette, &c.,* 96 Equity 317.

The learned Vice-Chancellor seems to have relied upon *Morse v. Metropolitan Steamship Co.,* 87 Equity 217, reversed in this court in 88 Equity 325.

In that case the charge was abuse of trust by the board of directors, dissension among them touching the management of the company, &c. Fraud in management was involved and the Vice-Chancellor cited in support of his action *Benedict v. Columbus Construction Co.,* 49 Equity.

The bill does not allege that the complainant is a creditor. There is no case we can find that directly rules the question. Under our statute the mortgage must first be foreclosed in order to ascertain if there is to be a deficiency decree. At the time the bill to foreclose was filed, complainant could not have sued the corporation on the debt. But even if he could be regarded as a creditor, there are no averments and no facts to justify a statutory receiver, nor a receiver under the broad power of equity. No creditor was pressing the corporation, no stockholder was complaining. There is no fact to justify the finding that the corporation is not able to pay its obligations. There is no suggestion of abuse by the directors or dissipation of property by them. Even if it could be concluded that there was power to appoint a receiver, there was no justification for it in order to protect the complainant. The action in appointing a receiver produces a situation where the creditors are involved in the usual expense incident to a receiver without any possible advantage to them.

If the complainant can be said to take anything by virtue of a resolution of the board of directors, we respectfully ask the Court to read the testimony taken upon the return of the order to show cause, to determine if there was not bad faith between the complainant and the directors, and that the directors were not thinking of protecting the creditors and stockholders when they passed the resolution.

The order appointing the receiver was erroneous and should be reversed.

Respectfully submitted,
COLE & COLE,
Solicitors of Appellants.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

Between
JOHN SCHUSTER,
Complainant-Respondent,
and
VENTNOR GARDENS *et al.*,
Defendants-Appellants.
} On Appeal from Chancery.

BRIEF FOR RESPONDENT.

STATEMENT.

Frank J. Pedrick and Son, a partnership, was widely engaged in a number of real estate developments in and around Atlantic City. It had become well-known through general advertising and aggressive salesmanship and had sold real estate valued at many millions of dollars. Among other things it proceeded to develop a tract of about one hundred and sixty-five acres of land in the City of Ventnor, adjacent to Atlantic City. This land was separated from the built-up part of Ventnor by a waterway or thoroughfare.

Because of its inaccessibility the land was practically valueless. The Pedrick concern formed the plan of filling in this thoroughfare and the adjacent meadows and creating a development called Ventnor Gardens. For this purpose the partnership organized the company known as Ventnor Gardens, Incorporated. Practically ninety per cent. of the stock was held by the members of the partnership and ten per cent. by other persons, including the officers of the company.

It made arrangements for the filling in of the land, but before any of the work was done it laid out all of the land in the form of building lots and made contracts of sale with prospective lot-owners aggregating two and one-half million dollars. This money was to be paid ten per cent. upon the purchase and two per cent. per month until fifty per cent. of the purchase price was paid, and a purchase money mortgage was to be taken for the balance. The development work was to be finished not later than January 1st, 1928.

A very large sum of money has been collected from the lot-owners, but the work of improvement is not more than fifty per cent. complete and more than half of the thoroughfare has not been filled. Without this filled the land is inaccessible. (Note: It does not appear in the proof, but more than two million dollars has been collected from the lot-holders and appears by proof in other proceedings.)

At the time Ventnor Gardens, Inc., purchased the land there was a purchase money mortgage remaining of $250,000 subject to release clauses; subsequently a second mortgage of $250,000 placed upon the property to raise money to continue the development. Thereafter the complainant, John Schuster, was induced to loan the $33,000 and was given as security twenty-two bonds and twenty-two mortgages covering specific lots in the Ventnor Gardens development. These lots were not and are not filled in and are inaccessible because of the intervening thoroughfare.

At the time that the complainant was induced to loan the $33,000 the Pedricks, who had a contract to act as general agents for Ventnor Gardens, fraudulently represented to him that the twenty-two mortgages were first liens upon the lots and concealed from him the fact that there was a purchase money mortgage and the second mortgage, aggregating in all $500,000 that were prior in lien to his mortgage. This allegation is nowhere denied and Schuster only found out the truth

when he took his mortgages to be recorded and after he had parted with his money.

Shortly thereafter the Pedricks fell into financial difficulties and made an assignment to three trustees of all their propertiies The three trustees were John C. Slape, Brently H. Pope and Harlan H. Bradt. The trustees carried on the business from about April 23, 1927, to some time in the latter part of August, 1927, when they publicly abandoned their trust and refused to continue the management of the properties.

During the time the trustees were in possession they collected over $100,000 in payments from the lot-buyers, which money was diverted from the Ventnor Gardens corporation to the payment of debts of other Pedrick-controlled corporations. They likewise further encumbered the property with a $900,000 trust mortgage and borrowed $155,000 from the banks in Atlantic City upon some of the bonds secured by the trust mortgage. This money was also diverted from the Ventnor Gardens company. In addition, one of the trustees, Bradt, who was an employee of the dredging company which had been filling in the property, voted himself a new contract aggregating $267,000, which contract was inflated to cover the debts due from the Pedricks and which would have operated as a mechanic's lien upon the property.

As far as can be ascertained, and it is not denied in this case, there were not at the time of the filing of the bill any creditors of Ventnor Gardens, Incorporated, except the mortgage holders. The reason for this condition was that the Pedrick partnership in their contract as general selling agents had agreed with Ventnor Gardens, Incorporated, to do all the construction work. Therefore, all the contracts for the construction work were made with the Pedricks and not with Ventnor Gardens. Consequently there are not, as far as can be ascertained, any general creditors.

Shortly after the time that the trustees abandoned the properties in August of 1927, the Pedrick partner-

ship was adjudged bankrupt. Receivers in the Court of Chancery were appointed for practically all of the corporations controlled by it with the exception of Ventnor Gardens. Ninety per cent. of the stock of Ventnor Gardens was controlled by the trustee in bankruptcy, and there were apparently no other creditors except the mortgage holders.

In addition to the $33,000 and three mortgages held by the complainant Schuster, it is admitted that at least $50,000 more of such mortgages are outstanding. All the mortgages were in default by reason of the non-payment of taxes and are now in default for the non-payment of interest.

In this situation, complainant Schuster filed his bill in the Court of Chancery to foreclose his mortgages and at the same time filed a bill for a general receiver for the company. At the same time application was made by the Kwass Realty Company for a receiver on the ground that it had a lien against Ventnor Gardens and that the property was being dissipated.

It was shown at the hearing before the Vice-Chancellor that the officers of the company had no interest in its affairs and that they were not functioning; that they owned only two shares of stock each; that they were employees of the Pedrick concern. The president admitted that he had been guided in the conduct of the company first by the Pedricks and afterward by the trustees. It was admitted that the company had suspended business; that it was not going on with the development; that checks payable to Ventnor Gardens, Incorporated, aggregating many thousands of dollars were lying undeposited in the offices of Pedrick & Son, being moneys due from the lot-owners; and that there was no one to take care of the property of the company or to continue its business.

On the day that the present bill was filed, counsel for Schuster at his request met with the directors of the company and informed them that he was about to file a petition for a receiver; that he presented the petition to the board of directors and requested them to consent to the immediate appointment of a receiver. (Page 61, lines 20 to 29, State of the Case.) The proof shows that the directors, with no one present but themselves, discussed the matter for upwards of a half hour.

"Q. So there was some considerable time for the consideration of this matter by the directors?

A. Yes.

Q. About how long?

A. Fifteen minutes to a half hour." (Page 52, State of the Case, lines 12 to 19.)

That at this meeting a resolution was passed consenting to the appointment of a receiver.

The petition was then filed and application made to Vice-Chancellor Ingersoll for the immediate appointment of a receiver. A temporary receiver was appointed and an order made to show cause why the receiver should not be made permanent and notice given of the order to show cause to all parties concerned.

Upon the return of this order counsel appeared stating that he represented Steelman, Whitaker & Duncan. No affidavits were filed in opposition to the petition and there is nothing in the record to show that either Duncan or Whitaker have any interest whatever in this controversy. All of the record in opposition to the appointment of the receiver was taken in the form of testimony before the Vice-Chancellor and was addressed to the good faith of the company's officers in consenting to the receivership.

On examination by counsel the president of the company admitted under oath that:

"Q. Is the company able to proceed with its business?

A. No, sir, I don't believe it is. No.

Q. Has it any funds to proceed with?

A. I don't believe it has.

Q. Could it do so with safety to the public?

A. I don't imagine it could. No.

Q. Or to its stockholders or to its creditors?

A. No." (Page 62, State of the Case, lines 18 to 25.)

Another director testified:

"Q. Now you were familiar with the affairs of this company, were you not?

A. Yes.

Q. And you know it was in fact unable to continue its business, didn't you?

A. Yes.

Q. You knew that it was receiving money from the lot-holders and not going ahead with the improvements, didn't you?

A. Yes.

Q. You knew that it had not paid the taxes on the property, didn't you?

A. Yes.

Q. And you knew that it had mortgages aggregating over a half a million dollars, didn't you?

A. Yes." (Page 52, State of the Case, lines 21 to 36.)

The affidavit filed by the president of the company admits that

> "The company was without funds to continue the development; that it was unable to perform its contract with its lot purchasers to fill, grade and curb the lots purchased; that if the development was completed there would be due a sum sufficient to pay all the obligations of the company and leave a very large profit, but that the company at this time is unable to proceed and has suspended its ordinary affairs and has no prospect of resuming its business within a short time and unless some action is taken immediately the assets of the company will be greatly impaired to the detriment of its stockholders and lot purchasers." (Page 20, lines 29 to 37, and page 21, lines 1 to 5, State of the Case.)

The president in his affidavit also admitted that the company had contracts for the sale of lots aggregating two and one-half million dollars; that it had liabilities in the form of mortgages aggregating $600,000 and a $900,000 trust mortgage; and that there was taxes due amounting to $11,650. (Page 20, lines 17 to 28, State of the Case.)

There was no denial of the fraud practiced upon Schuster except that the president of the company denied that he personally made any representations to Schuster concerning the priority of his lien. (Page 20, State of the Case, lines 13 to 15.)

The theory of the bill is that by reason of the fraud practiced upon him, Schuster is a general creditor of the company and because, under the peculiar conditions surrounding this case, a receiver of the specific lots could not have been effectively appointed.

ARGUMENT.

1. The appellants have produced no proof to show that they have a right to prosecute this appeal.

Both the notice and petition of appeal are taken in behalf of Hiram Steelman, trustee in bankruptcy, Margaret Walsh Duncan and William H. Whitaker, a creditor. No order has been taken against Hiram Steelman, trustee in bankruptcy. There is no proof whatever in this case that Margaret Walsh Duncan is "a property owner." Whatever may be meant by "property owner" is not disclosed. If it may be taken to mean that she is a lot purchaser, then she had no rights against the company, since the company had until January 1st, 1928, to perform its contract with her. No proof of any kind was submitted that Whitaker was a creditor. We believe that no such proof was possible.

Counsel had ample opportunity upon the return of the order to show cause why the receiver should not be made permanent to present proof, either oral or in the form of affidavits, for the prima facie validity of his

client's claim. He did not do so, although his attention was called by counsel for the petitioner to the position of his clients. (Pages 37 and 38, state of the case.) The Vice Chancellor evidently presumed that counsel would produce oral proof of the right of his clients to be heard, but no such proof was adduced.

2. The Court of Chancery had jurisdiction to appoint a general receiver.

It is contended that the Court of Chancery had jurisdiction, both under the statute and under its general equity powers, to appoint a receiver. The bill alleged that the loan from the complainant to the defendant was obtained by fraud; that the security given him was not the security for which he had contracted; that there was a fraudulent concealment of its character. This made him a creditor of the company, since he had a right of action against the company for its fraudulent misrepresentation. The fraud is not denied and must be taken in the present state of the case to be admitted.

This Court, in approving the language of Vice-Chancellor Stevenson in *Hoopes* v. *Basic Company,* 72 *N. J. Eq.,* 426, said:

> "The meaning of the word creditor, as used in our statute in defining the classes of persons who are authorized to maintain this statutory proceeding, have been discussed in several cases. It is settled that the word creditor is not used in our statute in a narrow, technical sense. It is used in a broad sense, and I think it is safe to say that the general intention is that if a party is so related to the corporation and its assets as to be entitled to a share of what is divided among creditors—if the party can come into the proceedings as claimant and prove his claim, so as to be entitled to a dividend—it must be generally true that he is qualified as a creditor to institute the proceedings which result in the distribution of the assets in part to himself."

This is an application by a subsequent mortgagee and where the mortgagor in opposition

> "shows fraud on his part or makes him chargeable with bad faith in misappropriating the rents and profits for other purposes than the keeping down of the interest on the encumbrances, the Court may properly appoint a receiver."
>
> *Corteleueu* v. *Hathaway,* 11 *N. J. Eq.,* page 39.
>
> "That the owner of a part of the premises covered by a mortgage receives the rents therefrom and refuses to apply them on account of the interest due on said mortgages, the taxes thereon being unpaid, and there being no personal security, and the premises being insufficient justifies the appointment of a receiver pending foreclosure."
>
> *Stockman* v. *Wallis,* 30 *N. J. Eq.,* 449; also *Chetwood* v. *Coffin,* 30 *N. J. Eq.,* 450.

It is contended in appellant's brief that Schuster is not a creditor until he has first foreclosed his mortgage and obtained a deficiency decree. This has been answered by this Court in *Morse* v. *Metropolitan Steamship Co.,* 88 *N. J. Eq.,* page 322.

> "A person is no less a creditor because the time for the payment to him of the debt due him from his debtor has not matured" (page 328).

3. The Court of Chancery had power, under its general equity powers, to appoint a receiver.

> "The inherent power of the Court to appoint a receiver for the purpose of preserving the property in question and the rights of the parties to the litigation intact is beyond successful attack."
>
> *Morse* v. *Metropolitan Steamship Co., supra.*

It will be noted that the order continuing the receiver is strictly within the rule laid down in Morse vs. Metropolitan, supra, and is a custodial receiver only.

4. The Court had power, under the sixty-fifth section of the Corporation Act, to appoint a receiver.

It is admitted that the corporation had suspended its ordinary business for want of funds to carry on the same. The affidavit of the president of the company admits this. (Pages 21 and 22, state of the case.) The secretary and treasurer of the company admitted it.

> "Q. Would you have considered it wise, as a director of this company, to have opposed a receivership?
>
> A. No." (Page 53, lines 9 to 11, state of the case. See also page 52, state of the case.)

The president, Fitzsimmons, admitted:

> "Q. Now, did you think at the time this resolution was shown to you that there ought to be a receiver?
>
> A. Well, I sort of thought there should have been, yes.
>
> Q. When did you reach that conclusion?
>
> A. Well, after the other developments had gone into the hands of a receiver." (Page 59, lines 31 to 35; page 60, lines 1 to 5, state of the case.)

He also testified directly (page 62, state of the case) that the company was unable to proceed with its business; that it did not have any funds to proceed with; and that it could not do so with safety to its stockholders or creditors or with safety to the public. When pressed to amplify the latter statement, he said:

> "A. Well, I don't know exactly. By taking their lot payments and not being able to deliver the ground or real estate properly.
>
> Q. That is what you meant by the public—the people who had bought the lots?
>
> A. Yes." (Page 62, state of the case, lines 33 to 39.)

5. Good faith in the appointment of the receiver.

It is alleged that the receiver was not obtained in good faith. Upon the return of the order to show cause,

the Vice-Chancellor examined the whole proceedings *ab initio*. Counsel put the president and secretary and treasurer on the witness stand. He cross-examined them. The proof was that they had been informed that two applications for a receiver were to be made; that they met separately, discussed the matter for a half hour, then passed a resolution consenting to the appointment of a receiver; that at the time there was no funds to go on with the development or to carry out the contracts with the lot-owners.

Counsel states in his brief:

> "There is no fact to justify the finding that the corporation is not able to pay its obligations."

It is admitted that it was without funds by the very testimony adduced by appellant's witnesses. It was averred and admitted that the directors were not carrying on the business of the company. It was averred and admitted that the assets of the company were being dissipated. It was averred and admitted that the income from the lot-owners, which is the only apparent source of income, was being diverted for the payment of the debts of the Pedricks, and not that of the company. It was averred and admitted that new mortgage encumbrances were being placed upon the property and the proceeds thereof dissipated for purposes other than the benefit of the company. It was averred and admitted that the trustees had mismanaged the property. It was averred and admitted that the dominating factor in the control of the company, the Pedricks, were in bankruptcy, and the officers and directors of the company admitted that it had neither funds nor prospect of obtaining funds to carry on its business, and that the business was suspended.

6. The cases cited in appellant's brief do not apply.

The case of Atlantic Trust Company v. Consolidated Storage Company, 49 N. J. Eq. 402, is not an appellant decision, but a decision by the Vice-Chancellor on an

application for the appointment of a receiver. There the Court, in exercising his *discretion,* said that

> "Mere proof of insolvency will not *in all cases* make it the duty of the Court to appoint a receiver. It must, in addition, be made to appear according to the requirements of the statute that the corporation will not be able, in a short time, to resume its business with safety to the public."

The Court also said that

> "Where the managers of the corporation were striving with fair prospect of success to relieve it of embarrassment, the Court would not interfere."

This case is wholly devoid of any such facts. The facts are directly opposite. The officers and directors admitted that they are not about to resume business, nor are they striving to conduct the business at all.

In *Aldrich* v. *Union Bag Co.,* 81 *N. J. Eq.* 244, again we have a decision that is not an appellant case. In this case the present Chancellor declined to exercise his discretion on an order to show cause, because he found that no irreparable injury had been shown, as the acts complained of as acts of mismanagement had gone on for several years without objection on the part of the petitioners.

In *Greenbaum* v. *Lafayette,* 96 *N. J. Eq.* 317, this Court, in examining the facts, reached the conclusion that the corporation had virtually no debts; that it was not in need of funds; and that, on the other hand, it had valuable real estate and there was nothing to show that the corporation was being mismanaged.

In the Greenbaum case this Court, in interpreting the corporation act, said that

> "In order to have a receiver, one of three conditions must exist as the basis of judicial intervention. 1. Whether the corporation is insolvent. 2. Whether it has suspended its ordinary business for want of funds to carry on the same and is not about to resume this business within a short time thereafter. 3. Whether its business has been and is being conducted at a great loss and grossly prejudicial to the interests of its creditors and stockholders so that its business cannot be continued with safety to the public and advantage to its stockholders."

It is admitted by the testimony taken before the Vice-Chancellor at the instance of appellant's counsel that the company has suspended its business and that it cannot continue with safety to the public and advantage to its stockholders.

CONCLUSION.

It is respectfully submitted that never was a case in which a receiver was more necessary than in the instant case. Unless the affairs of this corporation can be liquidated, the lot-buyers who have invested upwards of two million dollars will lose their entire investment, the mortgagees will likewise lose their investment.

The officers of the company have no interest in it. They had admittedly abandoned the management of it. The trustee in bankruptcy, who held ninety per cent. of the stock, had refused to apply for a receiver. It may be because he doubts his legal right so to do. There are no creditors except the mortgage holders.

Can it be possible that a corporation, having admittedly millions of dollars' worth of assets and correspondingly millions of dollars' worth of liabilities, can be abandoned by its officers and directors, and that there is no power in the Courts of Equity in this State to intervene and rescue the property for the benefit of those who have invested large sums therein?

Respectfully submitted,

EMERSON RICHARDS,
Solicitor of Respondent.