

New Jersey Court of Errors and Appeals

THOMAS W. JACKSON,
Plaintiff and Appellant,
vs.
LORENZO C. DILKS,
Defendant and Respondent.

Brief of Appellant.

The point to be decided in this case is whether the defendant, Lorenzo C. Dilks, is personally liable to Mr. Jackson for the re-payment of the interest due on the money borrowed from Mr. Jackson for the payment of wages due to employees of the bankrupt at the time the bankruptcy petition was filed. There is, I think, no dispute as to the facts from which a liability would arise for the re-payment of the loan with interest, either by Mr. Dilks personally or from the bankrupt estate. The money was borrowed between twelve and one o'clock P. M., on August 7th, 1913, and a receipt given for the same, signed Lorenzo C. Dilks, Receiver for the Goeller Iron Works (see Exhibit P. 1, page 44). Mr. Dilks agreed to procure wage claim assignments as security for the loan of this money and these wage claims were duly assigned to Mr. Jackson, as appears by Exhibit D. 4, page 54. Mr. Dilks, the defendant, promised to pay interest on the loan at the rate of 6 per cent. This appears from the testimony of Mr. Jackson on lines 10, 11 and 12 on page 12. It also appears from the letter written by Mr. Dilks to Mr. Jackson and dated August 11th, 1914 (Exhibit P. 2, lines 33 to 40 on

page 44) ; and also from the letter written by Mr. Dilks to Mr. Jackson, dated September 3rd, 1914 (Exhibit P. 3, lines 24 to 28, page 46). It nowhere appears in the evidence, or in the exhibits, that Mr. Dilks, as receiver or trustee for the creditors of the Goeller Iron Works, expressly charged the estate of the bankrupt with the payment of interest (see page 32, lines 28-40). He did not do so orally and he did not do so by any written obligation. Exhibit P. 1, page 44, which is the receipt of the \$2,200 is signed LORENZO C. DILKS, RECEIVER FOR THE GOELLER IRON WORKS. This however, is not an express charge of the obligation upon the estate.

The method used to charge the estate with the principal of the loan was by procuring the assignment of filed wage-claims against the estate. These assigned wage-claims gave Mr. Jackson a right of a priority of a certain degree, and practically secured to him the return of the principal of the loan. But the bankruptcy law did not permit the estate to be charged with interest on these assigned wage-claims. The Bankruptcy Act does not give to claimants on either priority claims or general claims, interest on the amount of the claim. The amount of the claim is fixed at the time of the filing of the petition in bankruptcy, and there is no power or authority whatever, to grant interest upon it. This has been very clearly stated in a decision in the United States Supreme Court in *White vs. Knox*, 111 U. S., 784. This rule is also stated in the case of *In re Kallak*, 147 Federal Rep., 376. The following is a quotation from a part of the case :

“The contention of the trustee rests entirely upon the ground that public taxes constitute a claim against the bankrupt estate to be paid with other claims in the ordinary course of administration. As other claims are not permitted to draw interest after the adjudication,

it is therefore contended that the amount of the public demand for taxes is subject to the same restriction."

The Court, therefore, distinguishes between a claim for taxes and ordinary claims.

In the case of *Chemical National Bank vs. Armstrong*, 59 Fed. Rep., 372, on page 379, the Court stated:

"It is true that if the assets are more than sufficient to pay all debts, then the creditors are allowed dividends to pay the interest due from the debtor bank (*National Bank vs. Mechanics*, 94 U. S., 437), but in the measuring of the share of each creditor in the fund, interest beyond the date of the suspension is not calculated."

Thus we see that the parties could not and did not contemplate that the wage-claims should draw interest, and yet we find from the letters of Mr. Dilks (Exhibits P. 2 and P. 3, pages 44 and 46) that Mr. Dilks contemplated paying interest, and agreed to do so. Now how was he to do it? He could not pay it on the wage-claims; and if the principal of the loan was not a charge against the estate, he could not pay it from the estate. It is apparent, therefore, that he intended to pay it personally.

We will now take up the attempt of the defendant to show an intent on the part of the parties concerned to charge the estate with the interest, and an attempt to show an authority on the part of the trustee to so charge the estate. On August 5th, 1913, an order was entered in the bankruptcy proceedings, signed by Edwin G. Adams, Referee, authorizing Lorenzo C. Dilks, Receiver in Bankruptcy of the Goeller Iron Works to continue in whole or in part the business of said bankrupt, with

full power to purchase for cash or upon usual credit, materials or supplies and to contract or defray any and all expenses in the conduct thereof, and among other things to do such other things as may be deemed necessary for the proper continuation or management of the said business for a period of thirty days from the date of the entry of said order. This order does not empower the receiver to borrow money as such receiver for the purpose of paying debts of the bankrupt which existed prior to the filing of the petition in bankruptcy; this order does not give the receiver the right of changing the priority of claims against the estate of the bankrupt, which would be its effect if the receiver could borrow money from Mr. Jackson and make the receiver's indebtedness a charge on the assets of the estate, prior to claims of all classes of creditors (see Bankruptcy Act, Section 64, Sub. B.). I believe that this order gives the receiver no power whatever, to borrow money. It certainly can give no power to borrow except in the customary way and for necessary expenses. On August 7th, 1913, at 2.30 o'clock in the afternoon, more than two hours after the money had been borrowed from the plaintiff, Mr. Jackson, an order was entered in the bankruptcy proceedings authorizing the receiver "to borrow such sums of money, not to exceed \$15,000 as shall, in his discretion, be necessary for the continuance of the business of the above-named alleged bankrupt, and for the purpose of completing such contracts of the said alleged bankrupt as may, in his judgment, be profitably carried out * * * he hereby is authorized, in his discretion, to execute a certificate or certificates of indebtedness as receiver herein to the persons, firms, or corporations from which he may borrow money." This order does not authorize the receiver to borrow money for the purpose of paying claims against the

estate of the bankrupt, nor does it give the power to the receiver, to create a priority for the claims against the estate which is not provided by law. Such would be the result if the receiver borrowed the money from Mr. Jackson and paid it over to wage claimants in payment of their claims, and thereby created the loan of Mr. Jackson to the receiver, as a receiver's indebtedness with a priority over all other claims against the bankrupt estate.

The parties never contemplated that the loan of Mr. Jackson or the interest due thereon was an indebtedness of the estate under the authority of the order of August 7th (see Mr. Dilk's testimony, page 32, lines 28 to 40, and page 30, lines 30 to 40). If the loan is a receiver's indebtedness the estate has not been properly closed. The trustee has not properly administered the estate. He has paid dividends to general creditors and to creditors entitled to priority ahead of a receiver's loan which is a prior charge against the assets. The acts of the defendant in administering the estate of the bankrupt is a practical construction of the contract of loan with Mr. Jackson, and such construction is contrary to the present contention of the defendant. The defendant has never treated it as a receiver's indebtedness and chargeable upon the estate as an expense prior to all claims of creditors.

It should also be taken into consideration with all these circumstances, that the order was entered more than two hours after the loan had been made by Mr. Jackson and it nowhere appears in the testimony that Mr. Dilks made it known to Mr. Jackson that an application had been made to the referee in bankruptcy for power to borrow money (see Mr. Dilk's testimony, page 32, lines 28 to 40). If it be true that Mr. Jackson had no knowledge whatever of Mr. Dilk's authority to borrow money or that he would shortly have such authority to charge

the estate with the amount of the loan which he, Mr. Jackson, was making to Mr. Dilks at the time, then the parties to the contract must have agreed upon a personal obligation. It is a principle in the construction of contracts that all the circumstances attending the creation of the contract shall be considered in order to show the intent of the parties to it. It would be manifestly absurd to charge Mr. Jackson with an intent to trust Mr. Dilks as receiver and as receiver only, with the money loaned, when neither Mr. Dilks or Mr. Jackson had knowledge of the order to borrow money.

Aside from the specific facts in the case, we have the general principles of law which create a personal liability upon Mr. Dilks.

In Ency. of Law and Procedure, volume, 39, page 333, it is stated:

“To render the estate liable however, it must be shown that the trustee acted within the scope of his powers, and that the articles furnished were really for the use and benefit of the trust estate; and the trustee may and should, in making contracts, expressly stipulate that the trust estate and not he, should be liable thereon, for in the absence of such an express agreement absolving him from liability, a contract made by him is binding on and enforceable against him alone.”

This law is clearly recognized in the case of *Knipp vs. Bagby*, 96 Atl. Rep., page 60, on page 61:

“The law is perfectly well settled that the party holding the estate in trust, even with general powers of management, is personally bound by the contract that he may make as trustee, though he designates himself as such; and nothing will discharge him but an express provision showing clearly that both parties agreed to act upon the responsibility of the

funds alone, or of some other responsibility, exclusive of that of the trustee, or some other circumstance clearly indicating another party who is bound by the contract, and upon whose credit alone it was made."

"But in the absence of such express agreement or circumstance plainly indicating an intention on the part of the party doing the work or making the expenditure to exclude the personal liability of the trustee, and to rely exclusively upon the estate or some other source for payment, the trustee, at whose request the work was done or expenditure made, will be held personally liable. In such case he must seek reimbursement from the trust estate."

In the American and English Ency. of Law, volume 24, page 40, it is stated with reference to receiver's certificates that:

"The certificate must therefore be issued in strict accordance with the order and for the express purposes mentioned. Nor can the terms of the order be extended or in any way altered by implication. Where receiver's certificates are issued in violation of the order, authorizing their issuance, they are, as a rule, void."

On page 41, section 8, it is further stated:

"It has been held that if a receiver goes beyond the order of the court and issues certificates bearing false and fraudulent representations upon their face, he will be held personally liable to *bona fide* holders."

It is very apparent that the loan of the plaintiff Mr. Jackson, does not come within the terms of the Order (Exhibit D. 7, page 59) which authorizes the receiver to borrow money up to a certain amount which may be necessary, in his discretion,

for the continuance of the business and for the purpose of completing certain contracts. The money was borrowed from Mr. Jackson, as stated in the testimony of Mr. Dilks and commencing at line 40 on page 20 and extending over to page 21, for the purpose of paying claims against the bankrupt estate, as an inducement to get the old employees to work, and not for the purpose of paying them for working for the receiver. The order only covers such expenses as might be incurred by the receiver in completing the contracts or running the business, and was never intended to pay claims against the bankrupt estate.

It also conclusively appears from the testimony of Mr. Dilks, that there never was any intention of charging him, as receiver or trustee. It was agreed between Mr. Dilks and Mr. Jackson that the receiver should procure assigned wage-claims against the estate of the bankrupt, as security for the loan (page 29, line 35, as well as in other places in his testimony). There is no dispute as to the fact that the wage-claims were assigned as security for the loan. If the receiver was liable only as receiver, and the money was borrowed under the authority of the Order of August 7th (Exhibit D. 7) the assignment of wage-claims did not give any further security whatever, because the assets of the estate were liable for the debts of the receiver incurred under that Order prior to the lien of wage-claims; and if there were not sufficient assets in the estate to pay the indebtedness incurred by the receiver, under the authority of that Order, there would be no assets whatever upon which the wage-claims would be a lien. It is ridiculous to construe the transaction of the loan as an obligation upon the estate, because it gives no meaning whatever to the assignment of the wage-claims as additional security. But if we regard it as a personal loan

to Mr. Dilks, it then becomes apparent that the wage-claims were a real and additional security for the payment of the indebtedness.

For the foregoing reasons the Court should have granted the plaintiff's motion for the direction of the verdict for the plaintiff.

The Court should also have charged the plaintiff's first request to charge, as submitted to the Court, and also the third request to charge, as submitted, and the fifth request to charge, as submitted; and that the Court committed error when he charged the jury that it was left to them to find whether the Order, authorizing the receiver to borrow money, dated August 7th, was made subsequent to or prior to the loan, or whether or not an Order was made, and that if it was on the same day, there was a question whether it was made before the conversation at the bank or afterwards.

It was error for the Court to admit the defendant's Exhibits D. 2 and 3 over the plaintiff's objection (see page 23).

It was also error to admit defendant's Exhibit D. 4 over the plaintiff's objection (see page 23).

It was also error to admit in evidence, defendant's Exhibit D. 6 over the plaintiff's objection (see page 25).

FRANK BENJAMIN,
Counsel for Appellant.



New Jersey Court of Errors and Appeals.

THOMAS W. JACKSON, <i>Plaintiff and Appellant,</i>	} <i>On Appeal.</i>	10
<i>vs.</i>		
LORENZO C. DILKS, <i>Defendant and Respondent.</i>		

BRIEF OF DEFENDANT AND RESPONDENT. 20

The appeal in this case seeks to reverse the judgment of the New Jersey Supreme Court, Essex Circuit, in favor of the respondent and against the appellant.

FACTS.

Mr. Jackson, the appellant, sued Mr. Dilks, the respondent, for two hundred sixty-one dollars and sixty cents (\$261.60) for interest on money which he claimed was lent to Mr. Dilks personally. Mr. Dilks was the receiver in bankruptcy of the Goeller Iron Works, having been appointed on the first day of August, 1913. After his appointment as receiver, an order was made on the fifth day of August, 1913, by Edwin G. Adams, Referee in Bankruptcy, Ex. D 8, p. 62, authorizing Mr. Dilks to continue the business of the alleged bankrupt

for a period of thirty days. In the order of the Referee in Bankruptcy, Ex. D 8, Mr. Dilks was authorized, p. 63, l. 15, "to sell for cash or upon the usual credit, in his discretion and in the ordinary course of business, the goods and chattels of the above named alleged bankrupt, with full power to do such other things as may be deemed necessary for the proper continuation and management of the said business for a period of thirty days from the entry of this order."

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At the time Mr. Dilks was appointed receiver, the wages of the workmen were unpaid for the two weeks immediately preceding his appointment (testimony of Mr. Dilks, p. 20, l. 30; p. 21, l. 20). It appearing to Mr. Dilks that it was necessary in order to preserve the working force at the plant of the Goeller Iron Works that the workmen should be paid, and retained. Mr. Jackson was largely interested in the Goeller Iron Works, having an interest in many of their unfinished contracts. Mr. Dilks and Mr. Jackson met at the Merchants' National Bank in Newark, and there conferred on the subject of paying the workmen, and thereupon Mr. Jackson advanced twenty-two hundred dollars (\$2200.00), taking Mr. Dilks' receipt, Ex. P 1, p. 44, for the same. This receipt is as follows:

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"Newark, N. J., Aug. 7th, 1913.

Received of Thomas W. Jackson check for twenty-two hundred dollars for which I am to deliver to him wage claim assignments of equal amount.

Lorenzo C. Dilks,

Receiver for The Goeller Iron Works."

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To secure the re-payment of the money to Mr. Jackson, when the workmen were paid they assigned their wage claims to Mr. Jackson as security.

Of the twenty-two hundred dollars (\$2200.00) advanced only two thousand eighteen dollars and twenty cents (\$2018.20) was used for the payment of the wages and the balance returned to Mr. Jackson.

Thereafter, in the month of January, 1914, Mr. Jackson filed his petition in the United States District Court, for the District of New Jersey, Ex. D 1, p. 47. Mr. Jackson's signature to this petition was identified at p. 15, although his signature has not been printed as part of the case. In this petition Mr. Jackson stated that Mr. Dilks informed him that he, Mr. Dilks, was unable to continue the business unless the wages of the workmen and servants were paid, for the reason that they refused to work until they were paid, and that he, Mr. Dilks, had been authorized by an order of the Referee to continue the business and that he had no money with which to pay the wages then due; and that Mr. Jackson thereupon loaned Mr. Dilks the money to pay the wages for which "said receiver promised to pay interest at the rate of six per cent. (6%) until paid."

The prayer of the petition is as follows:

"Your petitioner therefore prays that the amount so loaned by your petitioner to said receiver may be paid to your petitioner with interest thereon at the rate of six per cent. (6%) * * *"

On the seventh day of August, 1913, an order was made by Edwin G. Adams, Referee in Bankruptcy,

Ex. D 7, p. 59, authorizing Mr. Dilks, as receiver, to borrow such sums of money, not to exceed fifteen thousand dollars (\$15,000.00), as should in his discretion be necessary for the continuation of the business of the bankrupt, and for the purpose of completing such contracts of the alleged bankrupt as might be profitably carried out. This order was stamped filed at 2:30 P. M. The loan between the parties was negotiated sometime during the middle of the day. Mr. Dilks testified that he thought it was sometime between twelve and one o'clock, p. 10 30, l. 30. The correspondence which passed between the parties would indicate that it was the understanding of Mr. Dilks that the matter was not a personal one with him. In Ex. P 2, p. 44, which is a letter from Mr. Dilks to Mr. Jackson, Mr. Dilks wrote that he did not feel justified in paying interest without an order from Judge Adams. This letter was signed by Lorenzo C. Dilks, Trustee. (Mr. Dilks was appointed trustee in bankruptcy.) 20 In Ex. P 3, p. 46, which is a letter from Mr. Dilks to Mr. Jackson, Mr. Dilks told Mr. Jackson that he would do anything he properly could to secure an authorization to procure the interest. This letter was signed Lorenzo C. Dilks, Trustee.

In Ex. D 2, p. 52, which is a letter from Mr. Jackson to Mr. Dilks, Mr. Jackson wrote that in all fairness the interest should be paid out of the Goeller estate. 30

It would seem that the burden of proof fairly sustained the position of Mr. Dilks that the transaction was not a personal one. The receipt was given by him as receiver in bankruptcy; he testified that the dealings were with him as receiver in bankruptcy; and Mr. Jackson himself, in Ex. 40

D 1, stated that Mr. Dilks, as receiver, promised to pay interest at the rate of six per cent. (6%). In the face of this evidence, Mr. Jackson stands alone contending that the transaction was a personal one between him and Mr. Dilks.

There are six grounds of appeal.

Counsel for the plaintiff in error has not designated in his brief which grounds of appeal he relies upon, and has not separated his brief into points. It is therefore somewhat difficult to reply to his brief in an orderly manner. Therefore counsel for the respondent will take up in their order the grounds of appeal.

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POINT 1.

The first ground of appeal is as follows, p. 67:

1. That the court refused to charge the jury as requested in the first request of the plaintiff to charge the jury.

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The first request to charge is as follows, p. 39, l. 20:

1. That the order of the Referee in Bankruptcy, dated August 5th, 1913, authorizing Lorenzo C. Dilks, receiver, to continue the business of the Goeller Iron Works, bankrupt, does not empower the receiver to borrow money.

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The Judge charged the jury as follows, in answer to this request:

"I so charge you, gentlemen, that it did not authorize the receiver to borrow money on the receiver's certificate. What the receiver might have done to continue the business was

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a general power, he could not under that authority bind the receiver to repay the money which he borrowed on his loan under a receiver's certificate."

10 In considering the power of the receiver to borrow money under the order dated August 5th, 1913, Ex. D 7, it must be borne in mind that the receiver was given full power to do anything that might be necessary for the proper continuation and management of the business.

20 It becomes apparent at once that it was vitally necessary to keep the employees intact. There were a large number of them as will be seen by examination of Schedule A, p. 49, 50, 51. If these men had been permitted to stray away from the business and seek other employment, it would have been practically impossible for the receiver to have continued the business. This fact was communicated to Mr. Jackson as appears by his petition, Ex. D 1, p. 47. The payment of the workmen and their continuance in the employment of the receiver was something that was urgently necessary for the proper continuation and management of the business.

30 Under these circumstances it is therefore contended by the respondent that he had authority under this order to borrow money to take care of the wages.

In the case of *In re Erie Lumber Company*, 150 Fed. Rep. 817, it is held:

40 The power to continue business of a bankrupt corporation under a receiver or trustee implies the power to make debts, to provide for their payment, and to borrow money for urgent necessities.

POINT 2.

The second ground of appeal, p. 67, is as follows:

2. That the court refused to charge the fifth request of the plaintiff to charge the jury. The fifth request to charge is as follows, p. 40:

5. That at the time said contract of loan was made there was no express agreement to relieve the defendant personally from the obligation and to charge the estate of the Goeller Iron Works. 10

Counsel for the appellant in his brief, p. 6, cites the case of *Knipp vs. Bagby*, 95 Atl., p. 60. The quotation from this case, p. 7, is to the effect that where there are circumstances plainly indicating an intention to exclude personal liability, the trustee is not personally liable. 20

There were certainly circumstances indicating that it was not the intention of the parties that Mr. Dilks should be personally responsible. Mr. Dilks testified that it was not his intention to bind himself personally; the receipt which he gave was signed by himself as receiver and the petition of Mr. Jackson, Ex. D 1, p. 47, shows that Mr. Jackson's understanding of the matter was that Mr. Dilks was dealing with him as receiver. 30

Under these circumstances it was a question for the jury to determine whether the contract was between Mr. Dilks personally or as receiver.

The request to charge was faulty in that it made no reference to the fact that circumstances might indicate the intention of the parties. 40

The question for the jury to determine was whether the contract was a personal one or not, and they had a right to determine this, if they found there was no express agreement, from the circumstances surrounding the transaction.

POINT 3.

The third ground of appeal is as follows, p. 67:

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3rd. On the exception to the Court's charge, wherein he stated: "Gentlemen, there has been one question brought to my attention while you were out of the room, and that was as to the order for borrowing money being made before or after the loan was made. That is a matter I leave for you to determine, whether or not the evidence shows it was made before or after or whether or not any order was made. It was on the same day; there is a question whether it was made before the conversation at the bank or afterwards, and that is a matter for you to determine. As I told you before, I understood it was before. Counsel has called my attention to the fact that there may be a difference of opinion, so I will leave that to you."

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30 The order of the Referee in Bankruptcy, Ex. D 7, was stamped filed at 2:30 P. M. The transaction between the parties was between twelve and one o'clock of the same day.

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The order itself was dated August 7th, 1913. Counsel for the appellant on the fourth page of his brief states that on August 7th, 1913, at 2:30 o'clock in the afternoon, the order was entered in the bankruptcy proceedings. This statement is

hardly justified by the evidence which only shows that the order was endorsed filed at 2:30 P. M. That the time was endorsed on the paper is shown by the statement of counsel, p. 34.

It is a matter of common knowledge that the filing stamp put on the paper by the clerk does not indicate the hour at which the order was signed. It is extremely unlikely that the paper should have been marked filed simultaneously with the signing thereof by the referee. It is a fair presumption that the paper was in force during the entire day of August 7th, 1913. 10

It is contended by counsel for the respondent that the hour when the paper was filed raises no presumption that it was signed at that hour and therefore it became a question for the jury to determine whether or not it was filed before or after the transaction in question. 20

POINT 4.

The fourth ground of appeal is as follows, p. 67 :

4. That the court refused the request of the plaintiff to direct a verdict for the plaintiff.

At page 34 counsel for the appellant moved for the direction of a verdict 30

“on the ground there is no express authority to borrow the money. The evidence shows that the order was entered and filed one hour and a half after the transaction and that a power to borrow money for an estate must be an express power and not an implied one. An implied power would bind the person, bind the estate and must be an expression of intention to do 40

it; that as a matter of law there is no power and there was no power at the time of the transaction, nor has there been any evidence that there was an attempt to bind the estate."

This motion was rightfully refused because there was ample evidence to show that it was not the intention of the parties to bind the estate and that it was a question for the jury to determine whether or not the order to borrow money, Ex. D 7, had been signed before the money was borrowed. In addition to this the order permitting the continuation of the business, Ex. D 8, p. 62, was broad enough to authorize Mr. Dilks to borrow the money.

In re Erie Lumber Company, Supra.

POINT 5.

20 The fifth ground of appeal is as follows, p. 68:

5. That the court admitted in evidence over the plaintiff's exception, the order of the referee in bankruptcy in the United States District Court for the District of New Jersey, in the matter of the Goeller Iron Works, bankrupt, wherein the receiver of said bankrupt, the Goeller Iron Works, was authorized to borrow money, dated August 7th, 1913.

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The sixth ground of appeal is as follows, p. 68:

6. That the Court admitted in evidence, over the plaintiff's exception, the order of the referee in bankruptcy, in the matter of the bankruptcy of the Goeller Iron Works, dated August 5th, 1913, empowering the receiver to continue the business of said bankrupt, the Goeller Iron Works.

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Counsel for the appellant does not argue these grounds of appeal further than to say that it was error to admit them in evidence.

It is therefore respectfully submitted that counsel had abandoned these grounds of appeal and it is not incumbent upon the court to consider them.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

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RAYMOND, MOUNTAIN, VAN BLAR-
COM & MARSH,

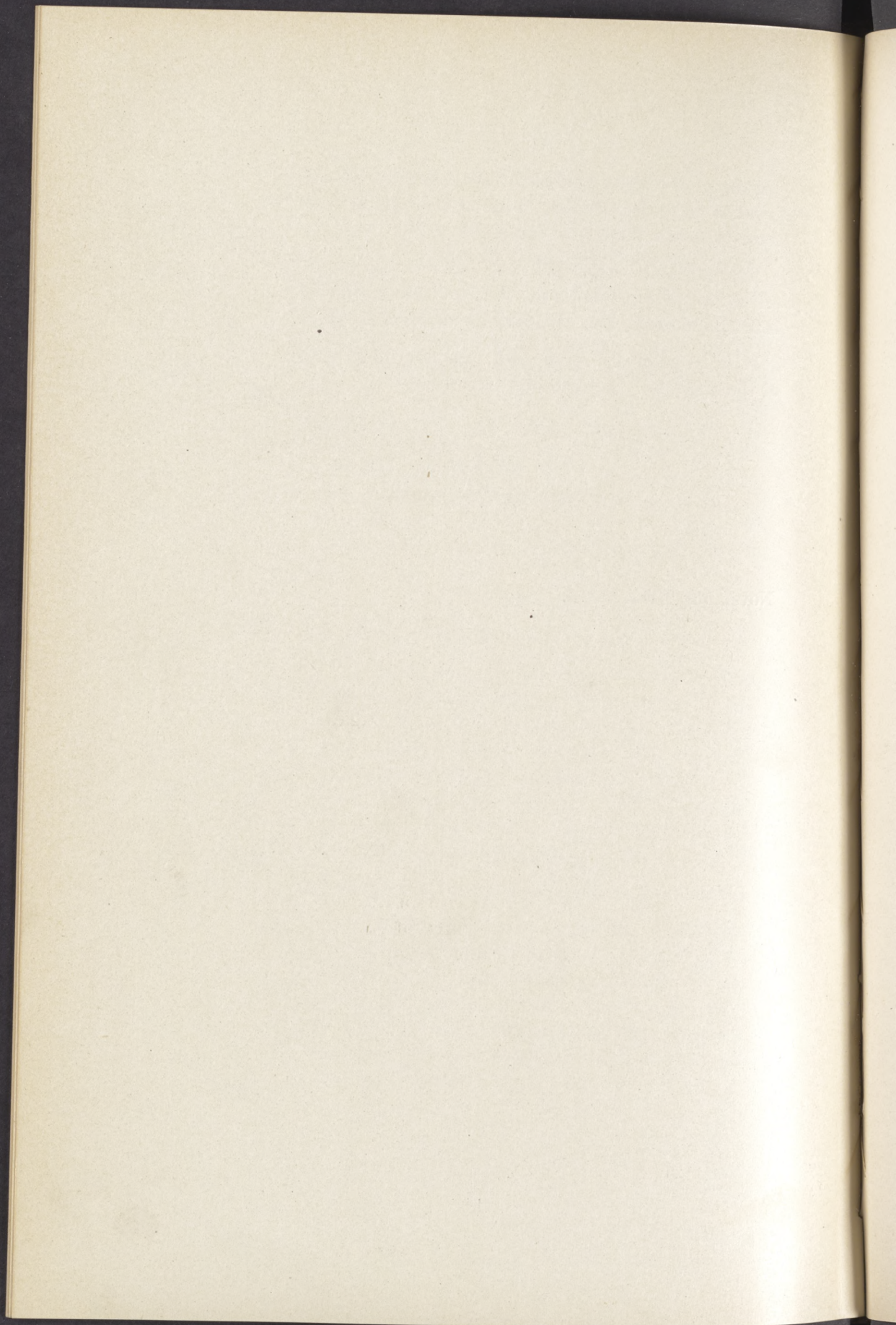
Counsel for Respondent.

November Term, 1916.

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Notice of Appeal.

Filed July 12, 1916.

New Jersey Supreme Court.

ESSEX COUNTY.

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THOMAS W. JACKSON,
Plaintiff and Appellant,
vs.
LORENZO C. DILKS,
Defendant and Respondent.

Notice of
Appeal.

To Raymond, Mountain, Van Blarcom and Marsh,
attorneys of defendant and respondent: 20

Take notice that the plaintiff appeals to the Court
of Errors and Appeals from the whole of the judg-
ment entered in this cause.

Dated May 26th, 1916.

FRANK BENJAMIN,
Attorney for Plaintiff and Appellant.

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Served May 26, 1916.

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Summons.

THE STATE OF NEW JERSEY, to LORENZO C. DILKS:

You are summoned to answer the annexed complaint of Thomas W. Jackson, in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 16th day of November, 1915.

WILLIAM C. GEBHARDT,
Clerk.

FRANK BENJAMIN,
Attorney.

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Complaint.

Filed

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

THOMAS W. JACKSON, <i>vs.</i> LORENZO C. DILKS,	<i>Plaintiff,</i> <i>Defendant.</i>	} <i>Action</i> } <i>at Law.</i> } <i>Complaint.</i>	10
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Thomas W. Jackson of the City of East Orange,
County of Essex and State of New Jersey, says:

FIRST COUNT. 20

1st. Plaintiff, on August 7th, 1913, lent to the defendant \$2,012.35 to be repaid with interest at six per cent. thereon, at the time certain wage claims due the employees of the Goeller Iron Works, a corporation, a bankrupt, should be paid in the course of administration of said estate, said wage claims having been assigned to the plaintiff as security for said loan.

2nd. Plaintiff, on October 8th, 1915, received \$2,012.35 from the trustee for the creditors of said Goeller Iron Works, a bankrupt, on the assigned wage claims. 30

3rd. Plaintiff, on October 11th, 1915, demanded from the defendant the payment of the interest due on said amount loaned, amounting to \$261.60, but no part thereof has been paid.

Complaint.

SECOND COUNT.

1st. Plaintiff, on August 7th, 1913, lent to the defendant, \$2,012.35 to be repaid on demand, with interest at six per cent. thereon.

10 2nd. As security for said loan the plaintiff received \$2,012.35 of assigned claims for wages of employees of the Goeller Iron Works, a corporation, whose estate was in course of administration in bankruptcy in the United States District Court for the District of New Jersey.

3rd. On October 8th, 1915, plaintiff received \$2,012.35 from the trustee for the creditors of said Goeller Iron Works, in payment of the principal due on said loan, to said defendant.

20 4th: Plaintiff, on October 11th, 1915, demanded the payment of the interest due on said loan, but no part thereof has been paid.

Plaintiff claims as damages \$261.60.

FRANK BENJAMIN,
Attorney for Plaintiff.

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Answer.

Filed February 1, 1916.

NEW JERSEY SUPREME COURT.

THOMAS W. JACKSON,

*Plaintiff,**vs.*

LORENZO C. DILKS,

*Defendant.**Action
at Law.*

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Answer.

Defendant, of the Town of Cranford, County of Union, and State of New Jersey, says:

1. First Defence to First Count:

He denies the truth of the matters contained in the first count of the complaint, except he admits that he, as trustee in bankruptcy of the Goeller Iron Works, paid to the plaintiff the sum mentioned in the second paragraph thereof, but that this was by virtue of an order of the Bankruptcy Court.

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2. Second Defence to First Count:

He states that on the 7th day of August, 1913, he was the receiver or trustee in bankruptcy of the estate of the Goeller Iron Works, bankrupt, and that he dealt with the plaintiff concerning the matters and things set forth in said first count, not individually, but as receiver or trustee in bankruptcy as aforesaid, and that his liability, if any, is not an individual liability, but a liability as trustee in bankruptcy as aforesaid.

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3. Third Defence to First Count:

That the plaintiff took absolute assignments of certain preferred wage claims in said bankruptcy proceedings, as purchaser thereof, and thereafter filed

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Answer.

the same in the United States District Court for the District of New Jersey, and obtained an order from Edwin G. Adams, Esq., referee in bankruptcy, directing this defendant as trustee in bankruptcy, to pay the amount of said wage claims to the plaintiff. That plaintiff, in realizing upon his said assigned claims as alleged on this count of his complaint, failed and neglected to obtain interest upon his said claims, to which he was entitled, if at all, from and through the said court at said time, and which interest the defendant, as an officer of the bankruptcy court could not pay, except by order of said court.

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4. Fourth Defence to First Count:

He states that this defendant never received or realized any consideration from the said plaintiff for said alleged accommodation, but that said accommodation, if any, was for the use and benefit of the said plaintiff and the defendant solely in his official capacity as an officer of the said bankruptcy court as receiver or trustee in bankruptcy of the Goeller Iron Works.

20
5. Fifth Defence to First Count:

That at the time the plaintiff advanced said money referred to in the first count of his complaint, it was agreed between the plaintiff and the defendant that in consideration of the advancing of said amount to pay said labor claims, he should take an assignment of said claims and that the defendant, as said receiver or trustee, should complete certain contracts for the benefit of the said plaintiff, and this defendant states that as receiver and trustee in bankruptcy, he did perform and complete the said contracts as agreed upon, and that the arrangement between the said plaintiff and defendant, as receiver and trustee, was confirmed and approved by the court of bankruptcy, Edwin G. Adams, Esq., Referee. That at said time, this defendant and the transactions between the plain-

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Answer.

tiff and this defendant were under the jurisdiction and control of the United States District Court, District of New Jersey, before Edwin G. Adams, Esq., Referee in Bankruptcy, and the plaintiff, although duly notified by this defendant, as trustee in bankruptcy, failed and neglected to apply to said United States District Court, having jurisdiction in the premises for the payment by this defendant, as trustee in bankruptcy, of the amount now claimed for interest, and by reason of his own neglect and laches, he has failed to realize his claim out of the funds of the said estate. 10

6. Sixth Defence to First Count:

That by reason of the acts of the plaintiff and the orders and proceedings in the court of bankruptcy made upon due consideration of controversies between the plaintiff and this defendant, as receiver or trustee in bankruptcy, the said plaintiff is barred from the collection of his said claim from this defendant personally, or as receiver or trustee in bankruptcy, in this court. 20

7. Seventh Defence to First Count:

Any action or right of action which the plaintiff might have for the cause of action stated in his complaint, should be had in the United States District Court, District of New Jersey, before Edwin G. Adams, Esq., Referee, which court has exclusive jurisdiction over the subject matter of this action. 30

8. First, Second, Third, Fourth, Fifth, Sixth and Seventh Defence to Second Count:

Defendant reiterates and realleges, respectively, the first, second, third, fourth, fifth, sixth and seventh defences hereinbefore set forth, as to the first count.

RAYMOND, MOUNTAIN,
VAN BLARCOM & MARSH,
Attorneys for Defendant. 40

Reply.

Filed February 16, 1916.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

10	THOMAS W. JACKSON, <div style="text-align: center;"><i>vs.</i></div> LORENZO C. DILKS,	} <i>Plaintiff,</i> <i>Defendant.</i>	} <i>Action</i> <i>at Law.</i> <i>Reply.</i>
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1st. The plaintiff denies every allegation in the answer.

20 2nd. The second defence in the answer to the first count in the complaint, is not sufficient in law, for the reason that it does not state specifically whether the defendant was acting as receiver or trustee in bankruptcy, and it does not set forth sufficient facts to show that he had power to make the contract set forth in the complaint, so as to bind himself as receiver or trustee.

30 3rd. The third defence to the first count is not sufficient in law, for the reason that the law does not permit interest to be allowed on a claim in bankruptcy after the filing of the petition in bankruptcy upon which the adjudication is made.

4th. The fourth defence to the first count is not sufficient in law, for the reason that the consideration of the promise or accommodation may be paid or received by someone else other than the defendant, and for the further reason that the defendant does not show whether he is receiver or trustee in bankruptcy,

Reply.

or does not show that he had power to bind himself as receiver or trustee.

5th. The fifth defence to the first count is not sufficient in law, for the reason that the law does not permit interest to be collected from an estate in bankruptcy or claims against the estate after the filing of the petition in bankruptcy upon which the adjudication is made.

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6th. The sixth defence to the first count is not sufficient in law, for the reason that the answer does not show or allege that the matters in controversy between the plaintiff and defendant were within the jurisdiction of the United States Courts or that any orders or proceedings were had therein affecting the claim of the plaintiff against the defendant, as set forth in the complaint.

7th. The seventh defence to the first count is not sufficient in law, for the reason that it does not set forth or show how the United States District Court for the District of New Jersey, or the referee in bankruptcy, had jurisdiction of the subject matter alleged in the complaint.

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8th. The first, second, third, fourth, fifth, sixth and seventh defences to the second count are not sufficient in law, for the reason set forth in the second, third, fourth, fifth, sixth and seventh defences to the first count.

30

FRANK BENJAMIN,
Attorney for Plaintiff.

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Opening.

NEW JERSEY SUPREME COURT.

THOMAS W. JACKSON,

vs.

LORENZO C. DILKS.

10

Transcript of testimony of stenographer's notes in above case, taken before Willard W. Cutler, Judge, and a jury, on Monday, May 22, 1916.

Frank Benjamin for plaintiff.

Raymond, Mountain, Van Blarcom & Marsh, by Andrew Van Blarcom and John J. Cushing, of the New York Bar, for defendant.

Jury impanelled and sworn.

Mr. Benjamin opened for plaintiff.

20

Mr. Van Blarcom opened for defendant.

THOMAS W. JACKSON, plaintiff, sworn in his own behalf.

Direct examination by Mr. Benjamin.

Q Where do you live, Mr. Jackson?

A I live in East Orange.

Q Are you acquainted with the defendant, Lorenzo C. Dilks?

30

A I have that pleasure.

Q In the month of August, 1913, did you have any personal transaction with the defendant, Mr. Dilks?

Mr. Van Blarcom. I object as calling for a conclusion.

The Court. Yes, what he did.

Q In August, 1913, what transaction, if any, did you have with the defendant?

40

A About August the 7th, I think it was, that day—it might have been the day before—and while in my office I received a telephone call from Mr. Dilks,

Jackson, Thos. W., direct.

who said he was at the Merchants National Bank, and he wanted to know if I would come up there and meet him and I asked what it was for. He said he was in trouble with the help at the Goeller Iron Works, which concern had gone into bankruptcy, and Mr. Dilks through my help and through my attorney's help and others had been appointed the receiver for the company. I told him that I would go up there which I did. I saw Mr. Dilks and then he explained to me that the hands of the company that he had been receiver for had not received their pay for the preceding week or two and under the rule under which they worked they would not go to work until they got their money; he had no money and the company had owed me considerable money at the time and I felt very reluctant to do anything about it, but Mr. Dilks was very urgent about it because he knew nowhere else to get it and while standing there the president of the Merchants Bank came to us and I asked him why he didn't borrow money from the bank and he made the remark that he wasn't able to do it. The president of the bank, Mr. Riker, added to that by saying he would be very glad to loan Mr. Dilks the money if only he had the legal authority to borrow the money. I asked him whether it was judicious for me to loan money to Mr. Dilks under the circumstances and he said he thought it was but he didn't go any further than that then, so Mr. Dilks continued to further urge in the matter by saying the money would be amply secure; he would furnish wage claims as security for the payment of the loan and he felt there was ample personal property there to be sure of meeting that claim; that these wage claims were priority claims and would be paid out of the first money that came to him as receiver. Mr. Riker, the president of the bank, also said the same thing. I have no doubt but what they both believed that that was so but the fact remains that the wage claim instead of being

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Jackson, Thos. W., direct.

the first claims to be paid was pretty nearly the last, being held up for considerably over two years, but I finally realized that the loan might be secured by note. He wanted to know what interest I would charge him and I turned over to the president of the bank and I asked him what interest he would charge Mr. Dilks if he had the privilege of loaning him money, if the bank could. He said, "We should charge him six per cent." Mr. Dilks said, "All right, that is what I shall pay you then." The money was transferred and in the course of time Mr. Dilks turned over the wage claims to me, which were given in security for the money that was advanced and the matter has only comparatively recently been fixed up notwithstanding my many requests to have the thing settled.

10
20 Q At the time you speak of the transfer of the money did you receive any receipt from Mr. Dilks?

A I don't think I received any receipt at that time. I have always said that that receipt was written at the time—Mr. Dilks would know about that.

Q I show you what purports to be a receipt, dated August 7, 1913, and ask you if you have seen that before?

A I am not sure whether Mr. Dilks gave me that at that moment or not.

Q Did he give it to you?

30 A Oh, yes.

Q Is that his handwriting?

A That is his handwriting.

Mr. Benjamin. I offer this in evidence.

Marked Exhibit P. 1.

Mr. Van Blarcom. No objection.

Letter read to the jury.

40 Q I show you what purports to be a letter, addressed to Thomas W. Jackson, dated August 11, 1914, and signed Lorenzo Dilks, trustee. Did you re-

Jackson, Thos. W., direct.

ceive that and do you recognize the signature?

A That is quite correct, a letter of Mr. Dilks sent to me.

Q Is that his signature?

A That is his signature.

Mr. Benjamin. I offer this in evidence.

Mr. Van Blarcom. We don't object.

Marked in evidence Exhibit P. 2.

10

Letter read to the jury.

Q I show you what purports to be a letter, dated December 3, 1914, and addressed to T. W. Jackson and signed Lorenzo Dilks, trustee, and ask you if you recognize that signature and if you received the letter?

A I received the letter and that is Mr. Dilks' signature.

Mr. Benjamin. I offer this.

20

Mr. Van Blarcom. No objection.

Marked in evidence as Exhibit P. 3.

Letter read to the jury.

Q The amount of the receipt of August 7th is \$2,200.

Q Was any portion of that amount returned to you at that time?

A Yes, immediately afterwards \$181 and some cents was returned, reducing the amount to the amount stated there.

30

Q Did you receive from the wage claims any amount from the estate of the Goeller Iron Works?

A On October 18, 1915, I received what purported to be the amount still due for the face of the wage claims without any interest.

Q What was that amount, if you can recall that?

A \$2,012.35.

Q Have you at any time received interest on this amount?

A I have not.

40

Jackson, Thos. W., cross.

Q Still remains due and payable?

A Yes.

Cross examination by Mr. Van Blarcom.

Q What is your business?

A I am a manufacturer of underwear.

Q And you have been dealing with the Goeller
Iron Works for how long before their failure?

10 A Possibly a year and a half, two years.

Q They were indebted to you at the time they
failed?

A They were.

Q To what extent?

A I don't remember that. Quite a large amount.

Q Over \$25,000?

A Well, I don't remember that. Quite a large
amount. I don't remember how much it was.

20 Q Somewhere in that neighborhood?

A Somewhere around that.

Q You learned about the time they failed, either
before or at the time they failed, they had not com-
pleted those contracts, which later were completed,
had you not?

A Yes.

Q What was involved in those uncompleted con-
tracts which they told you had been completed?

30 A I don't know as I understand that question
exactly.

Mr. Benjamin. I object to this line of cross
examination, going into the details of the un-
finished contract as incompetent cross examina-
tion.

Mr. Van Blarcom. I withdraw the question.

Q You say you were instrumental in having Mr.
Dilks appointed receiver in connection with other
people?

40 A I did.

Jackson, Thos. W., cross.

Q You had seen him and talked the situation over with him before that, the general situation?

A Sure.

Q You knew that this money was to be used to keep the plant intact, the organization intact?

A Yes, I had that stated to me that that money was to pay wages that had accumulated there and had to be paid.

10

Q Did you understand, was it your understanding that that was to be done, to keep the plant going, keep it so that Mr. Dilks could run the business?

A Yes, in this way. Mr. Dilks said the Goeller Iron Works had a number of uncompleted contracts there and to help creditors out at all that it would be necessary for them to complete the contract and it was then under way.

Q You also knew that there were uncompleted contracts of yours there?

20

A Yes, but the amounts that were due me was for work that had been practically done, the unfinished part of the work would be for the general creditors.

Q I show you this petition, petition of Thomas W. Jackson, which is marked "filed May 26, 1914," and ask you if that is your signature?

A That is my signature.

Mr. Van Blarcom. I ask to have this marked for identification.

30

Marked D. 1 for identification.

Q This is you letter, dated August 10, 1914, addressed to Mr. Dilks?

A It surely is.

Q And also your letter of September 2, 1914, addressed to Mr. Dilks?

A That is, surely.

Q These letters are part of the conversation which Mr. Benjamin read to the jury, are they not?

40

Jackson, Thos. W., cross.

A I didn't read the letters. I only said that is my writing.

Mr. Van Blarcom. I ask to have the two letters marked for identification, one dated August 10, 1914, and the other dated September 2, 1914.

Marked D. 2 and D. 3 for identification.

10 Q You took an absolute assignment of the wage claims, did you not?

A I took an assignment of the wage claims given as security for the money loaned.

Mr. Van Blarcom. I move to strike out the latter part of the answer on the ground I simply asked the witness if he took an absolute assignment of the wage claims.

The Court. He qualified his answer. I shall let it stand.

20 Q I show you what purports to be an assignment, filed March 5, 1914, and ask you if that is the assignment that you took at the time you advanced this money?

A I presume it is. I don't know anything about it. I presume it is.

Q Do you know whether those are the claims which were assigned to you?

A Anybody could read those claims. I have to take it for granted that those are.

30 *Mr. Van Blarcom.* I ask to have these papers marked for identification.

Assignment, dated March 5, 1914, marked D. 4 for identification.

Paper marked "affidavit" and marked "filed March 5, 1914," marked D. 5 for identification.

40 Q I show you what purports to be a petition, addressed to the Hon. Edwin G. Adams, Referee in Bankruptcy, dated September 9, 1913, and ask you if that is your signature?

Jackson, Thos. W., cross.

A Surely.

Mr. Van Blarcom. I ask to have this paper marked for identification. It comprises two petitions and I merely ask the witness to identify his. Marked D. 6 for identification.

Q When was it you had the conversation at the Merchants Bank with Mr. Dilks?

A I think it was on August 7, 1913, but as I said 10
before it might have been the day before.

Q You said you asked Mr. Riker, who was president of the bank, whether he thought it judicious to loan money?

A Yes.

Q What do you mean by that?

A I meant to say that I didn't want to go and put \$2,200 in a loan that was questionable; that is all.

Q What was questionable about it? 20

A \$2,200.

Q What did you think was questionable about the loan?

A I thought that Mr. Dilks said that if I would loan him the money that as security that he would, as security, assign to me the wage claim that he intended to pay and agree personally to pay six per cent. interest on the loan until it was returned; that it would be under Mr. Riker's say-so I thought it was a judicious loan.

Q When did he agree personally to pay the six per cent. interest on the money? 30

A At the time the loan was paid it was a loan to him. I told him to nobody but Mr. Dilks would I be willing to advance the money.

Q What was there questionable about it? You knew who he was?

A Yes, I knew who he was.

Q Did you think he wasn't good personally for \$2,200? 40

Jackson, Thos. W., cross.

A That didn't enter my mind.

Q Didn't enter your mind for the reason—

A I had known Mr. Dilks for possibly a week or two weeks previous. I knew nothing about Mr. Dilks's circumstances whatever except that I personally thought a great deal of him.

Q You didn't endeavor to inform yourself whether he was a man of financial standing or not?

10 A I did not.

Q Isn't the reason for that that you were not dealing with him personally but as receiver?

A It was.

Q Why didn't you inform yourself as to his financial situation?

A Because five minutes after that Mr. Dilks said, "I will secure you this money by assigning these wage claims."

20 Q Why didn't you ask him to sign a personal receipt instead of one as receiver when you gave him the check?

A If I were a prosecuting attorney perhaps I would. I am only a layman and I don't go into those things quite as wisely as a lawyer would. I suppose I should have done that. He had no business to sign that as receiver. At the time I was told he might just as well have signed it, "Lorenzo C. Dilks, Gentleman."

Q Were you told that by your lawyer?

A No, sir.

30 Q Who told you that?

A I don't know that I am obliged to say that.

Mr. Benjamin. I object going into this line of cross examination.

Q If Mr. Dilks had in mind that he was dealing with you as receiver he very properly signed that as receiver?

40 A He signed that as receiver and that is one of the things that that receipt wasn't given at the time the money was paid.

Jackson, Thos. W., cross.

Q It was stated that day?

A I don't know whether that was the day. I say I am not sure. It might possibly be and if he had signed it as receiver I don't know that I should have made any protest or objection against it.

Q Why not?

A As I say if I had been brought up to your profession I should probably be much more wiser of those things than I am. 10

Q You have been in business for how many years?

A I should think I have been in business for a good many years.

Q About how many?

A Probably thirty-five years.

Q And you have been loaning money for how many years?

A I haven't been loaning money for any years at all.

Q You had business dealings with Goeller Iron Works at least two weeks before their failure? 20

A I don't know that that has any bearing on the matter, but that was done as a personal, you might say a personal favor to Mr. Goeller who I thought a great deal of, and to help him out of a hole I foolishly allowed myself to be led into that transaction with him. I paid for my experience.

Q You knew that Mr. Dilks had been appointed receiver in bankruptcy of this company? 30

A Sure, I helped to do all I could to have him appointed.

PLAINTIFF RESTS.

Dilks, Lorenzo C., direct.

LORENZO C. DILKS, defendant, sworn in his own behalf.

Direct examination by Mr. Van Blarcom.

Q Mr. Dilks, what is your occupation?

A President of Milliken Brothers, Incorporated.

Q And what business are they engaged in and where?

10 A Iron and steel manufacturers and constructors.

Q In August, 1913, you were connected with the Eastern Steel Company?

A I was the general manager of sales of the Eastern Steel Company.

Q You were appointed receiver of the Goeller Iron Works?

A Yes, sir.

Q About what time?

20 A I think it was on August 1, 1913.

Q When did you meet Mr. Jackson?

A I met Mr. Jackson for the first time about two or three weeks prior to that at a meeting of the creditors of the Goeller Iron Works.

Q He was a creditor also, of course?

A Yes.

Q What about this conversation you had with him concerning the money that has been mentioned in the case here, what is your recollection of that conversation?

30 A As I recall it it occurred during the middle or latter part of the week immediately following my appointment as receiver, and we were threatened with some trouble from the men at the plant. They were raising a disturbance. We had to get some policemen out there in order to keep them from destroying the property, perhaps. They were making quite a storm and they were demanding their pay, which I think was for two weeks immediately preceding. It
40 seemed to me in my judgment as an experienced man

Dilks, Lorenzo C., direct.

in that line of business necessary to get the men to go to work just as soon as possible in order to keep the men from becoming scattered, going to other places to work and losing them and in order to save the estate damages of further delays to the contracts of the estate and Mr. Jackson's jobs so that I stopped in at the bank on the day in question and I had some talk with Mr. Riker and he said, "Perhaps Mr. Jackson would advance the money to pay the workmen and get them to go back to work," and we called Mr. Jackson up and asked him if he was coming down town to lunch that day as usual and he said he was coming. He came in and we talked it over. I can't recall the urging to which Mr. Johnson referred that I did in furnishing the money. I asked him if he would furnish the money. Mr. Riker asked him. He agreed to advance it. I don't recall whether I signed the receipt that is in evidence at that time or not but the money was furnished that day or the next day. 10

Q Would it refresh your memory any if you had this deposit slip of the Merchant's National Bank?

A No, I can't say it would. It would seem perhaps so, but I can't testify to that.

Q What was the conversation about the payment of interest? 20

A I don't recall any conversation about interest until two or three months after the money was received and the assignment bond turned over to Mr. Jackson but I would not say that because I can't recall it that there wasn't a conversation on that day about interest. I would deny that it was the intention in my mind that the interest would be paid, as I wrote Mr. Jackson, but I will say this that I never have had—I might say it now that I didn't have any negotiations with Mr. Jackson on the basis as an individual. I was acting in every instance as receiver of this property. 30

Q You have no personal interest in the plant? 40

Dilks, Lorenzo C., direct.

A Not a bit.

Q Did you ever personally promise to pay this interest out of your own funds?

A Oh, no.

Mr. Benjamin. I object to that as leading.

10 Q I show you a petition and order to continue business and ask you if this is your signature to the petition?

A Yes, that is mine.

Mr. Van Blarcom. I offer in evidence petition and order to continue business, filed August 5, 1913.

Mr. Benjamin. I object to the receiving of this in evidence as it is not pertinent to any issue and it does not appear upon the power of the receiver to borrow money.

20 *Mr. Van Blarcom.* In conjunction I wish to put in evidence an order to permit him to borrow money.

The Court. I will allow it and see if they connect it up. If they are not connected up they are of no value.

Mr. Van Blarcom. I first offer the order authorizing the borrowing of money.

Marked Exhibit D. 7 in evidence.

30 *Mr. Van Blarcom.* Next the petition and order to continue business.

Marked Exhibit D. 8 in evidence.

Exhibit D. 8 read to the jury.

Exhibit D. 7 read to the jury.

Q Now you say that you had no money to pay these men down at the works. The wages that were due them?

A That is right.

40 Q What was the situation? Would they continue work if they were not paid?

Dilks, Lorenzo C., direct.

A They were not only unwilling to go back to work, but they were threatening to destroy property.

Q Do you know whether they were union men or not?

A I don't know about that.

Q These two letters, which Mr. Jackson has identified, were they received by you in connection with the letters which have been read by Mr. Benjamin? 10

A Yes, I received these.

Mr. Van Blarcom. I will offer these in evidence, D. 2 and D. 3 for identification.

Marked Exhibit D. 2 and D. 3 in evidence.

Exhibits D. 2 and D. 3 read to the jury.

Mr. Van Blarcom. I offer in evidence the assignment, which has been marked D. 4 for identification.

Mr. Benjamin. I object to the admission of this because that is not an issue in the case. 20

The Court. I will admit it.

Counsel for plaintiff prays an exception to the ruling of the Court.

Exception noted as ground of appeal.

Marked Exhibit D. 4 in evidence.

Mr. Van Blarcom. There is also the claims of the workmen, which were actually assigned.

Mr. Benjamin. I object to them.

The Court. Same ruling. 30

D. 5 for identification marked Exhibit D. 5 in evidence.

Q Has the estate of the Goeller Iron Works been finally distributed by you?

A I have a small balance remaining on hand.

Q You have paid the final dividend?

A Yes.

Q When was that done?

A It was in August or September of last year, 40
1915.

Dilks, Lorenzo C., direct.

The Court. That assignment was for an assignment of the laborers' claims made by the receiver?

Mr. Van Blarcom. No, made by the individual claimants.

10 Q What did you do about this money that you got, this \$2,200 from Mr. Jackson, what became of that?

A The most of it was paid directly to the men and in exchange for that their signatures taken on the wage claim assignments. I had a balance left of something just under \$200 in cash which was returned to Mr. Jackson promptly, to the best of my recollection, within a week or ten days. There had been two or three men who hadn't called for their money although we had their money in the envelopes. Not being able to give him their assignments I forwarded those envelopes and the money to him and to 20 the best of my knowledge now all of those men except one finally arrived and asked for their money and we sent them to Mr. Jackson to get it in order that he might get in exchange for the money their assignments.

Q You didn't return any of this money personally?

A Not a cent.

Q Nor as a matter of fact as receiver?

A Not a cent.

30 Q I show you a paper, which has been marked Exhibit 6 for identification, and ask you if that is your petition?

A That is my signature.

Mr. Benjamin. I object to the admission of this.

The Court. I have not any idea of what it is.

40 *Mr. Benjamin.* Mr. Jackson has identified his signature to an affidavit, which is limited only to a part of it. I certainly object to the admission of anything else.

Dilks, Lorenzo C., direct.

Mr. Van Blarcom. It simply shows in a general way the relationship between Mr. Jackson and the bankrupt company.

The Court. I think you have to prove Mr. Dilk's signature to that.

Mr. Van Blarcom. I have. He has identified his signature.

The Court. What objection is there now? You have a paper now competent by identification by Mr. Dilks and Mr. Jackson. Why is it not competent as a document to go before the jury? 10

Mr. Benjamin. Because there is no connection between the first petition in that and Mr. Jackson's affidavit.

The Court. I think it can go in for what it is worth.

D. 6 for identification admitted in evidence and Exhibit D. 6. 20

Exhibit D. 6 read to the jury.

The Court. Are these claims in question which were paid out of this money included in that petition?

Mr. Van Blarcom. No, they refer to the uncompleted contracts which Mr. Jackson thought were not as he testified to.

The Court. Then they have no bearing on this case except so far as they show the connection and relation of these parties. 30

Mr. Van Blarcom. Yes. There is another petition which I want to offer.

Mr. Benjamin. I object to the admission of this. It is cumbering up the record; it is irrelevant and incompetent, not referring to the alleged loan but to certain uncompleted contracts and is long after the alleged transaction. It does not refer to the alleged loan or have anything to do with it. 40

Dilks, Lorenzo C., cross.

The Court. I do not think that should be admitted. You may take your exception.

Counsel for defendant prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What ^{balance is} bills are there in the estate left?

A \$129,~~130~~ \$130.

10 *By the Court.*

Q Does that represent dividends that are unpaid?

A Yes, sir. It is represented by small collections that came in after the reference order had been made, a dividend schedule made out of it.

Q That is money that has been received since your final dividend was made up?

A Yes, sir.

20 Q And any dividends which have been unpaid; that is to say, people have not drawn their dividend—you don't mean that, unpaid dividend?

A I can't be sure about that but I think that is not the case. I think it is collections that have been made since.

Cross examination by Mr. Benjamin.

Q At the time of the bankruptcy of the Goeller Iron Works you were a representative of the Eastern Iron Works?

30 A Eastern Steel Company.

Q They were creditors to a large extent of the Goeller Iron Works?

A Yes, sir.

Q In your petition, which has been read, where you apply for leave to run the business and to complete unfinished contracts you had in view the so-called equity of the bankrupt estate in those contracts?

A Yes, sir.

Dilks, Lorenzo C., cross.

Q To what amount was the Eastern Steel Company a creditor of the Goeller Iron Works?

A I don't recall the amount now.

Q A large amount?

A Yes. They were one of the largest creditors, I think. There were three amounts about the same, three creditors, the bank, Mr. Jackson and the Eastern Steel Company. The amounts were all about the same.

10

Q Can you give an approximate amount?

A Roughly about \$30,000. I can't testify as to that very closely.

Q What bank is it you are referring to as one of the large creditors?

A Merchants National Bank, Newark.

Q Of which Mr. Riker, of whom Mr. Jackson has testified, is president?

A Yes, sir.

Q You had a talk with the president of the Merchants Bank with reference to running the business, did you not, prior to getting this order?

20

A I don't know that I understand the question as to running the business. I had several conversations with Mr. Riker, matters pertaining to the business and the conducting of it.

Q You made an application to Mr. Riker as president of the bank for a loan for the purpose of running the business?

A Yes, I sold some receiver's certificates to the bank.

30

Q This order authorizing you to borrow money was obtained by you for the purpose of borrowing money from the bank?

Mr. Van Blarcom. I object. It speaks for itself. We are bound by the terms of the order.

The Court. Yes, the order shows.

Q How much did you borrow from the bank under the authority of this order?

40

Dilks, Lorenzo C., cross.

A I sold to them \$4,000 worth of certificates; I think it was the maximum, \$4,000 of certificates.

Q That was used by you as receiver for the purpose of running the business?

A Paying pay rolls, buying material, and so on.

Q When did you get that money from the bank?

A At different times. I would say the first two
10 months following the date of August 7th in this matter.

Q Didn't you ask Mr. Riker to loan you money for the purpose of paying the employees their wage claims you subsequently secured from Mr. Jackson?

A I asked him if he could do that and he said under the banking laws under which they were operating he could not do it.

Q Did he state particularly the reason why he couldn't?

A Because of the banking laws under which they
20 were operating.

Q Did he state what particular circumstances under which the law prevented his money?

A I don't know that he did. If he had it would not have meant anything to me anyway.

Q Wasn't it because as receiver you had no authority to borrow money for that purpose?

A No, I think not.

Q Didn't he tell you so?

A I don't recall that he did.

Q Were not you informed at that time that you
30 had no authority to bond the estate by a loan for this particular object?

A No, sir.

Q Was that the reason why Mr. Riker suggested Mr. Jackson as a possible person who would loan it?

A I don't know that it was.

Q You have testified on your direct examination that Mr. Riker suggested the name of Mr. Jackson?

A Yes, sir.
40

Dilks, Lorenzo C., cross.

Q Can you tell the circumstances why he suggested the name of Mr. Jackson?

A No, I can't. I had this conversation with Mr. Riker, which we have had in mind, and then he said, "Perhaps Mr. Jackson would advance this money because of his interest in the matter."

Q And also because the bank was unable to do it?

A Yes, sir.

Q He told you at the time the bank would loan you money on receipts of certificates?

A He may have said that, yes. I am not positive about that.

Q As your memory is refreshed doesn't it seem that that is the case?

A I say it may be. I can't be positive about it, no, sir.

Q You never gave Mr. Jackson receipted certificates?

A No, sir, I gave Mr. Jackson the wage claim assignments in accordance with my agreement with Mr. Jackson.

Q Your agreement with Mr. Jackson was to get these wage assignments from the laborers themselves?

A Yes, sir, I did that and gave him those assignments from the laborers themselves.

Q And you procured the approved wage claims and the execution of the assignments and delivered them to Mr. Jackson?

A Yes, sir.

Q You did that, as you said in your letter of August 11th, as security for the loan?

A That is my letter, I believe, yes, sir.

Q This statement has this sentence, in the letter, "Further; as security for the loan I turn over to you these claim assignments from the men to whom I paid the money." That is correct?

A Yes, sir.

10

20

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40

Dilks, Lorenzo C., cross.

Q Are you able to recall the date when you first had this conversation with Mr. Jackson?

A No, I can't recall the date exactly. The nearest I can fix it during the latter or middle part of the week immediately following my appointment.

Q Your appointment was on the 1st of August, 1913?

10 A Yes, sir.

Q You believed then it would possibly be in the middle or during the latter part?

A Yes, sir.

Q But you would not believe it would be the end of the week?

A Well, as I say the latter part, that may cover the end of the week.

Q Who obtained this order for you to borrow money?

20 A I don't understand the question; who was my attorney?

Q Yes. Who personally obtained this order giving you authority to borrow money?

A I don't know personally who presented it. I executed the petition and my attorney presented it; I believe, himself, or at least someone associated with him. I don't know who presented it.

Q Do you recall what time of the day you had this conversation with Mr. Jackson in the bank?

30 A I think it was during the middle of the day. I asked Mr. Jackson if he was coming down town to lunch as usual that day, and I think it was during the middle of the day, some time between twelve and one o'clock.

Q Did you go to lunch with Mr. Jackson that day?

A I don't remember that but I don't think I did.

Q Was that the time you got the check from Mr. Jackson for the money?

40 A I may have got it that day. I am not positive about that. I suppose I got the check the day this receipt is dated. This receipt is for a check.

Dilks, Lorenzo C., cross.

Q The receipt is dated the 7th of August, 1913?

A I suppose that is the day I got the check.

Mr. Van Blarcom. Where is the check? You might tell from that. Have you got the check?

Mr. Benjamin. No, I haven't it.

Q Do you remember the circumstances under which you drew and signed that receipt?

A I think not. I don't recall in every detail incidents of the conversation or the opening that was at the bank than this to which I have testified. 10

Q Do you remember sending that to Mr. Jackson in any way?

A I do not. I had really forgotten the existence of the receipt until I saw it here this morning.

Q You think it possible that at this interview at the bank that Mr. Jackson drew a check and gave it to you at the same time?

A That might have been so. 20

Q The check was drawn on the Merchants Bank, was it not?

A I think it was.

Q How long were you in the bank at the time?

A I don't know how long I was in the bank. I made frequent calls, frequent visits there in transactions of my business but I can't recall how long I was there at any one of the times.

Q Nothing whereby you can refresh your memory as to the matter? 30

A I know I would not undertake to do that. I do not know how long I was there any time I was in the bank.

Q Do you recall when you first saw this order of Referee Adams authorizing you to borrow money?

A I can't say that I recall when I first saw it. If I may I would like to mention here that while there may be a great deal that I don't know and I don't remember in my testimony, that I think it is princi- 40

Dilks, Lorenzo C., cross.

10 pally in connection with examination of these papers and remembering matters that were not as much in my mind at the time as the other parts of the work in getting the property moving, getting wheels turning again and getting the business going again. I was devoting myself more particularly to those matters than I was to legal matters which I left very largely to my attorney's attention and of which I knew nothing and I had to take their advice anyway.

Q You stated on your direct examination that you negotiated this as an application of the estate?

A Yes, sir.

Q Under what circumstances had you arrived at that opinion or conclusion?

20 A I think that is entirely obvious in this entire transaction with Mr. Jackson that I was acting for the Goeller Iron Works, the estate which I represented.

Q You were very desirous of continuing the estate of the bankrupt company?

A As much as possible.

Q Not only as trustee but also as a representative of the Eastern Steel Company?

A Yes, although that was rather incidental.

Q You had no knowledge at the time of this conversation with Mr. Jackson of any order of Referee Adams authorizing you to borrow more money?

30 *Mr. Van Blarcom.* Well, I don't think that makes any difference. I object to it.

The Court. I think it is competent to ask if he know about it at that time.

A No, I can't say now that I did, but I had an order to continue the business.

Q You never told Mr. Jackson that you had an order to borrow money at the time you made this arrangement with him?

40 A No, sir.

Dilks, Lorenzo C., cross.

Q You never mentioned the fact to him that any application had been made to borrow money, did you?

A I don't recall now that an application had been made at that time.

By the Court.

Q You had an order then to continue the business?

A Yes, sir, I had it.

10

By Mr. Benjamin.

Q You have heard Mr. Jackson testify here on the stand as to the conversation in the bank. Have you anything to say in any way that would add to it or amplify that conversation?

A The only amplification that I would make I have already touched on in my direct testimony, that I don't recall the urging to which Mr. Jackson refers and in which he says I engaged in order to get him to advance the money.

20

Q In the first paragraph of this letter of August 11, marked D. 2, which you have identified, it states, "Although the complete understanding between you and me that the matter was alone and I understood that I was to pay you interest on it"; that is a correct statement of the transaction that you had with Mr. Jackson in the bank?

A Yes, sir, and I know of no other means to use to identify myself as a trustee than the means I used there. I don't think that involves me personally and I know it was never intended to be so.

30

By Mr. Van Blarcom.

Q What about this check? Do you remember to whose order that was made or where you got it when you deposited it?

A I don't recall the details of that, no, sir.

Q Do you remember whether it was to your order personally or to your order as receiver or anything else?

40

Motions to Direct Verdict.

A No, I can't testify definitely. If it had been drawn to my order individually I only would have endorsed it over as receiver because it was deposited in my receiver's account.

Q It was put in your receiver's account?

A Yes, sir.

10 *Mr. Benjamin.* I would like at this time to put in the evidence of the endorsement on the cover of D. 2 showing the time of filing.

The Court. The whole paper goes in.

DEFENDANT RESTS.

20 *Mr. Van Blarcom.* I move for a direction of verdict on the ground that it appears that the defendant was receiver in bankruptcy of the Goeller Iron Works; that the receipt given in this case was signed by him as receiver of the Goeller Iron Works; that he at that time was authorized to continue the business under an upper court instruction; anything that in his judgment was for the best interests of the company he should do. He was authorized at that time to borrow money to be used in the business and under those circumstances, this being the admitted facts, I don't see what there is for the jury to pass upon. In addition to that we have

30 *Mr. Jackson's* own testimony that he was interested himself; that he was told unless these workmen were paid and satisfied they would not go on with the work; that the whole thing would come to a stop, and under those circumstances the receipt was given and signed by Mr. Dilks, he being authorized to continue the business and to borrow the money, I don't see what there is for the jury to pass upon and I move for a direction of verdict in favor of the defendant.

40 *Mr. Benjamin.* I move for a direction of ver-

Motions to Direct Verdict.

dict for the plaintiff on the ground there is no express authority to borrow this money. The evidence shows that the order was entered and filed an hour and a half after the transaction and that a power to borrow money for an estate must be an express power and not an implied one. An implied power would bind the person, bind the estate and must be an expression of intention to do it; that as a matter of law there is no power and there was no power at the time of the transaction, nor has there been any evidence that there was an attempt to bind the estate. 10

The Court. I refuse both motions and allow the case to go to the jury.

Counsel for defendant prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Counsel for plaintiff prays an exception to this ruling of the Court. 20

Exception noted as ground of appeal.

*Plaintiff's Request to Charge.***Plaintiff's Requests to Charge.**

NEW JERSEY SUPREME COURT.

10	THOMAS W. JACKSON, <i>vs.</i> LORENZO C. DILKS,	} <i>Plaintiff,</i> <i>Defendant.</i>	} <i>Requests</i> <i>to Charge.</i>
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The plaintiff makes the following requests to charge the jury :

1st. That the order of the referee in bankruptcy, dated August 5th, 1913, authorizing Lorenzo C. Dilks, receiver, to continue the business of the Goeller Iron Works, bankrupt, does not empower the receiver to borrow money.

2nd. That the order of the referee in bankruptcy, filed August 7th, 1913, empowering the receiver to borrow money was made and entered subsequent to the loan made by the plaintiff, Thomas W. Jackson.

3rd. That the receipt for \$2,200 signed by Lorenzo C. Dilks, receiver for the Goeller Iron Works is not the contract of loan made with the plaintiff.

4th. That the contract of loan made with the plaintiff was an oral one made at the Merchants National Bank.

5th. That at the time said contract of loan was made, there was no express agreement to relieve the defendant, personally, from the obligation and to charge the estate of the Goeller Iron Works, bankrupt.

FRANK BENJAMIN,
Attorney for Plaintiff.

Charge.

Charge.

The Court charges the jury as follows:

CUTLER, *J.*:

Gentlemen of the Jury. This is an action brought by Thomas W. Jackson against Lorenzo C. Dilks, individually, to recover certain moneys alleged to be interest due him on a loan made by him to the defendant, the interest being \$261.50. The defendant denies that he borrowed the money individually, and denies the right of the plaintiff to recover against him. That, in brief, is the situation as it is presented before you. 10

It is not disputed that some time in the month of August, 1915, the plaintiff and defendant met in a bank in this city and after having a conversation, in which the need of the plaintiff as receiver of a certain iron works to have some money to pay off the hands, and save the business of the concern had been talked over, \$2,200 was loaned by the plaintiff under a distinct understanding that he was to receive interest for that money. At that time or shortly afterwards a receipt, which has been offered in evidence, was given and that you can take into consideration in determining who was liable. It is as follows: 20

“Newark, N. J., August 7, 1915. Received of James W. Jackson check for \$2,200 for which I am to deliver to him wage claim, assignments of an equal amount. Lorenzo C. Dilks, receiver for the Goeller Iron Works.” 30

That is the only receipt that was ever given for this money so far as appears by this evidence. You will notice that the receiver was in no way personally interested in the borrowing of this money. He was holding an official position. He had been authorized by the referee in bankruptcy to continue the business. At that time he had not been authorized to borrow money. He was authorized as it appears on that same day to borrow money and to issue receiver's certifi- 40

Charge.

10 cates for it. It is not contended in this case that Mr. Jackson loaned the money on receiver's certificates but that he loaned the money and agreed to take as security for it the assignment of the laborers' claims, the very laborers who would not work unless their money was paid to them. (Their back wages had been paid to them.) I understand it is not disputed
20 that shortly after the money, \$2,200, came into the hands of Mr. Dilks he paid off these workmen and took assignments of their claims. The assignments to these claims were not made to Mr. Dilks, but they were made to Mr. Jackson. They amounted, as I understand it, to \$2,012.35 instead of \$2,200 and the difference between the \$2,200 and the \$2,012.35 was returned to Mr. Jackson, and you remember Mr. Jackson then held the assignment of these claims as security for the repayment of his money to the extent
30 of \$2,012.35. Things went along for some time and then Mr. Jackson filed the claims which he had as security with the bankrupt authorities, and the total amount of money which he had advanced, \$2,012.35, has been returned to him through these claims. Now, the only question for you gentlemen to decide in this case is, was the loan made to Mr. Dilks individually. If Mr. Dilks borrowed that money and agreed to pay interest on it the plaintiff is entitled to receive at your hands a verdict for that amount, \$261.60. If
40 on the other hand he borrowed it as receiver why then Mr. Dilks is not individually responsible for it. It would be moneys that belonged to the receiver and moneys that would have gone to the creditor, so it is entirely for you to decide, simply and solely whether or not Mr. Dilks negotiated the loan individually or whether he made it as receiver. You may take into consideration that Mr. Dilks says he made it as receiver, and that he agreed to pay interest for it as receiver, and you may ask yourself what interest he had to borrow it individually. On the other hand,

Charge.

Mr. Jackson says he did not know anything about the business of the receiver, that he did know Mr. Dilks and that he made the loan individually and expected to get the money back individually.

Now, gentlemen, I am going to leave the case to you and you are to take the case. Remember that the preponderance of the evidence must be shown by the plaintiff. He must show you that he is entitled to get this interest back from the defendant in this case. If he made the loan on the strength of Mr. Dilks's individual promise, he is entitled to receive the interest. If he did not he is not. Take the case and consider all the evidence and the letters that have been written by Mr. Dilks and the letters that have been written by Mr. Jackson, consider all the evidence in this case and then say whether or not the loan was a personal loan from Jackson to Dilks, or whether it was a loan from Jackson to Dilks as receiver.

I have been requested to make certain charges which I shall dispose of at this time.

"1. That the order of the referee in bankruptcy, dated August 5, 1913, authorizing Lorenzo C. Dilks, receiver, to continue the business of the Goeller Iron Works, bankrupt, does not empower the receiver to borrow money."

I so charge you, gentlemen, that it would not authorize the receiver to borrow money on the receiver's certificate. What the receiver might have done to continue the business was a general power, he could not under that authority bind the receiver to repay the money which he borrowed on his loan under a receiver's certificate.

"2. That the order of the referee in bankruptcy, filed August 7, 1913, empowering the receiver to borrow money was made and entered subsequent to the loan made by the plaintiff, Thomas W. Jackson."

I so charge you. It appears so by the evidence.

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Charge.

"3. That the receipt for \$2,200, signed by Lorenzo C. Dilks, receiver for the Goeller Iron Works is not the contract of loan made with the plaintiff."

That is not the loan, but you may consider it, having been made at the time, whether it was what these people understood at the time the loan was made.
 10 The loan had been made prior to the making of the receipt but the receipt being given at the time it is an element for you to consider, what the relation was the arrangement between these parties. If you find it was an individual loan the receipt would have no bearing. If you find it was not an individual loan but made by the receiver you may take that into consideration.

20 "4. That the contract of loan made with the plaintiff was an oral one made at the Merchants National Bank."

I so charge you.

"5. That at the time said contract of loan was made, there was no express agreement to relieve the defendant, personally, from the obligation and to charge the estate of the Goeller Iron Works, bankrupt."

30 That would not make any difference. The question is simply did Mr. Dilks make that contract individually. If he did then he has to pay the interest. If he did not he does not have to pay the interest. It is a mere question of fact for you to determine.

Take the case, apply the evidence and consider it carefully and then say whether or not the contract was a loan to Mr. Dilks as receiver and not individually. If it was made as receiver the verdict should be for the defendant and if it was made individually it should be in favor of the plaintiff.

(The jury retires.)

Charge.

Mr. Benjamin. I except to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

Mr. Van Blarcom. I want to take exception to that part of your honor's charge wherein you state that since the organization, that it was after this transaction, the evidence shows that clearly. I don't think it does show it very clearly. I want to except particularly on the ground the law takes no account of a fraction of a day. 10

(By direction of the Court the jury returns to the court room.)

The Court. Gentlemen, there has been one question brought to my attention while you were out of the room and that was as to the order for borrowing money being made before or after the loan was made. That is a matter I leave for you to determine whether or not the evidence shows it was made before or after or whether or not any order was made. If it was on the same day, there is a question whether it was made before the conversation at the bank or afterwards and that is a matter for you to determine. As I told you before I understood it was before. Counsel has called my attention to the fact that there may be a difference of opinion so I will leave that to you. 20

(The jury retires.)

Mr. Van Blarcom. My point is that it would not make any difference if the loan was made at eleven o'clock because the law does not take account of a fraction of day. 30

The Court. I refuse to charge that.

Mr. Benjamin. I take exception to your honor's charge where you leave it to the jury to find whether the order authorizing the receiver to borrow money, dated August 7th, was made subsequent or prior to the loan, and subsequent to that portion of you honor's charge which leaves the question to the jury 40

Charge.

whether the parties intended to charge the defendant individually, and I except to that portion of your honor's charge which says it makes no difference whether there was an express agreement to charge the estate or not.

Exceptions noted as ground of appeal.

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Postea—Judgment

NEW JERSEY SUPREME COURT.

THOMAS W. JACKSON,
vs.
 LORENZO C. DILKS.

10

(Copy of Postea and Judgment.)

The above stated cause having been referred for trial by his honor, William S. Gummere, Chief Justice of the Supreme Court, presiding over the Essex Circuit, to his honor, Willard W. Cutler, a circuit court judge, the said cause was tried before his honor, Willard W. Cutler, with a jury, at the Essex Circuit of said Supreme Court on May 22, 1916.

The jury rendered a verdict against the plaintiff and in favor of the defendant. 20

WILLARD W. CUTLER,
Circuit Court Judge.

Costs \$42.68.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendant recover of the plaintiff his costs, which are taxed at forty-two dollars and sixty-eight cents.

Judgment entered May 24, 1916. 30

WM. S. GUMMERE,
C. J.

40

Exhibit P. 2.

EXHIBIT P. 1.

Newark, N. J., Aug. 7th, 1913.

Received of Thomas W. Jackson check for twenty-two hundred dollars for which I am to deliver to him wage claim assignments of equal amount.

LORENZO C. DILKS,

10

Receiver for The Goeller Iron Works.

EXHIBIT P. 2.

LORENZO C. DILKS

Trustee in Bankruptcy of

THE GOELLER IRON WORKS,

Engineers and Contractors

Structural Steel Work Ornamental Iron Work

20

Main Office and Works:

394-408 Frelinghuysen Ave. & Penn. R. R.

60 Broadway, New York City,

August 11th, 1914.

Mr. Thomas W. Jackson,
54 McWhorter Street,
Newark, New Jersey.

Dear Mr. Jackson:

30

I have your letter of the 10th, relating to your claim for money paid to me and relating to the matter of interest.

40

At the time you turned the money over to me, and until comparatively recently, it was, I think, the complete understanding between you and me that the matter was a loan, and I understood that I was to pay you interest on it. Further, as security for the loan, I turned over to you wage claim assignments from the men to whom I paid the money, and you were to hold these assignments as security. Several times

Exhibit P. 2.

during the late winter just past and early in the spring, you asked me to settle the loan with the interest. At the times that you brought the matter up I did not have sufficient balance in cash to seem to justify making settlement at those times, but I told you every time you mentioned the matter that I recognized my liability and would, just as soon as I could get to it, repay you the amount loaned with interest. Then you suddenly switched to another tack and filed the assigned wage claims with the Court, which action, as I understand the matter, places you in the position of the men who executed the assignments, and you can probably now only recover the principal, or, in other words, just what would have been paid to the men if they still held these claims which you now hold. I am not sure now that I can pay you the interest. I am perfectly willing to pay it, and I have acknowledged in this letter that it was the understanding between you and me on the loan that it would carry interest, but considering the way you have switched the matter by filing your claims with the Court, I do not feel that I shall be justified in paying the interest without an order from Judge Adams.

If you lose the interest I shall sincerely regret it just as much as you will, but frankly I cannot believe that the responsibility is mine.

Yours very truly,

LORENZO C. DILKS,

Trustee.

LCD:2

EXHIBIT P. 3.

LORENZO C. DILKS
Trustee in Bankruptcy of
THE GOELLER IRON WORKS
OF NEWARK, N. J.

60 Broadway, New York City,

September 3rd, 1914.

10 Mr. T. W. Jackson,
54 McWhorter Street,
Newark, New Jersey.

Dear Mr. Jackson:

I have your letter of the 2nd, relating to the matter of loan and interest.

This is a matter which we can discuss to better advantage orally than by correspondence. I shall be glad to see you at any time that we may be able to arrange to meet here in New York or in Newark the
20 next time I am over there.

I am referring your letter to Mr. Cushing, asking him to advise me if there is any way which we can properly join with you in your efforts to secure the payment of interest on the loan in question. I do not, and have not at any time, denied the understanding between you and me that you were to receive interest, and I will do anything that I can properly do to secure an authorization to pay you this interest. The probable obstacle in your action in having filed
30 the claims which were given you merely as security. I made no objections to your filing the claims because I never had any intimation that it was your intention to file them until after they were filed and then I did not feel that it was proper for me to voice objections if you felt that the action which you had taken made your claim more secure.

Yours very truly,

LORENZO C. DILKS,

Trustee.

40 LCD:2.

EXHIBIT D. 1.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER OF THE GOELLER IRON WORKS, BANKRUPT.	}	<i>Petition for Allowance of Priority Claims.</i>	10
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To the Hon. Edwin G. Adams, Referee:

Your petitioner, Thomas W. Jackson, respectfully shows that on August 7th, nineteen hundred and thirteen, your petitioner loaned to Lorenzo C. Dilks, receiver of the said bankrupt, the sum of \$2,018.20, for the purpose of paying the wages of the workmen and servants of the Goeller Iron Works which had accrued and become due on the 3rd day of August, 1913, a list of which is hereto attached and made a part of this petition, and marked "Schedule A." 20

Your petitioner further shows that said receiver informed your petitioner that he was unable to continue the business unless these wages of the workmen and servants were paid, for the reason that they refused to work for the receiver until these wages, which were due and owing, were paid, and that he, the said receiver, had been authorized by an order of the referee appointed in the above entitled matter, to continue the business of the said bankrupt and that he had no money with which to pay the wages then due and owing to the workmen and servants. 30

Therefore, at the solicitation and request of said receiver, your petitioner loaned him said sum of money, for which said receiver promised to pay interest at the rate of 6 per cent. until paid.

Your petitioner further shows unto your honor that he procured an agreement from said receiver wherein 40

Exhibit D. 1.

said receiver agreed to assign to your petitioner the claims for wages of the said workmen and servants, who were paid by said receiver, a copy of which agreement is hereto attached and made a part of this petition, and marked "Exhibit B."

10 Your petitioner further shows unto your Honor that in accordance with said agreement, said receiver did procure an assignment of the wages due said workmen and servants to your petitioner, together with the proof of claim of each workmen and servant, a copy of said assignment being hereto attached and marked "Exhibit C."

Your petitioner further shows unto your Honor that he has filed due proof of claim of each of said workmen and servants, and of the assignment of their respective claims, to your petitioner, with your Honor.

20 Your petitioner therefore prays that the amount so loaned by your petitioner to said receiver may be paid to your petitioner together with interest thereon at the rate of 6 per cent., and that each of said claims may be allowed as a priority claim and payment thereof forthwith directed to be paid to your petitioner in payment of said loan to said receiver. And your petitioner will ever pray, etc.

Dated January , 1914.

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

THOMAS W. JACKSON being duly sworn according to law on his oath says: That he is the petitioner named in the foregoing petition, and that he has read the same and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

40 Subscribed and sworn to before me
this day of January, 1914.

"SCHEDULE A."

SALARY—AMOUNT DUE.

Joseph Darche, Draftsman, \$38.20; Victor H. Strombach, Draftsman, \$24; George Kollmer, Draftsman, \$10; Karl Segelbach, Draftsman & O. S. Foreman, \$26; Jean H. Messenger, Book-keeper, \$20; Naomi Witte, Stenographer, \$6; J. W. Hinsbach, Office Boy, \$6; Peter Szalor, Driver, \$13.50; Andrew Erler, Driver, \$13.50; Charles Engelberger, Watchman, \$12; Tony Dedorminick, Engineer, \$17.45; Hugo L. Weiss, Foreman, \$30; Kirt Goellen, Electrician & Mch., \$19.35.

10

OUT-SIDE MEN.

Benjamin F. Hamlin, Foreman, \$42; Wm. Eagleson, Pusher, \$30.25; Elmer Drake, Finisher, \$27.50; Geo. A. Clark, Finisher, \$27.50; Alfred A. Hogg, Finisher, \$30.25; Tom Eagleson, Finisher, \$27.50; L. Marquis, Finisher, \$27.50; Andrew Duff, Finisher (to Aug. 3, 1913, inclusive), \$34.05; John Domoganer, \$34.05; Louis Bobel, Finisher, \$34.05; John Nebske, Foreman, \$36; Gevege S. Meyers, Finisher, \$31.30; John Pisan, Finisher, \$31.10; James Dowd, Finisher, \$31.10; John Lattin, Finisher, \$31.10; Theodore Klein, Jr., Foreman, \$34.75; John Laubenstein, Finisher, \$27.50; Henry Hanselman, Helper, \$18.35; Martin Kobliska, Helper, \$15.75; George Schmidt, Foreman, \$20.10; Andrew Christopher, Helper, \$14.75; Anthony Hoelzel, Finisher, \$27.60; Walter Hoelzel, Helper, \$19.40; Steve Bruskle, Foreman, \$18.80; Walter Carbowictz, Helper, \$15.40; James Ledwedge, Finisher, \$8.65; Arthur Tart, Finisher, \$12.80; George Macik, Finisher, \$27.70; Garse Pirsak, Helper, \$19.25; John Wiloler, Finisher, \$27.95; Louis Rosenman, Helper, \$19.35.

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Exhibit D. 1.

SHOP.

- No. 1, W. F. Scheider, Pattern Maker, \$27.50; No. 3, Wm. Rickenbach, Layer-out, \$15.30; No. 9, John Yarama, Foundry Helper, \$10.50; No. 10, Henry S. Hamilton, Moulder, \$19.45; No. 11, Wm. Brownlie, Cupola Man, \$9.05; No. 14, Sam Spau, Foundry Helper, \$14.20; No. 19, James Howartt, Moulder, \$22.10; 10 No. 22, William Beihl, Foreman, \$21.40; No. 25, William Beihl, Laborer, \$8.90; No. 29, Stonislaw Buczkowski, Helper, \$13.85; No. 33, W. Burzkowsky, Foreman, \$15.30; No. 34, Joe Krug, Painter, \$16.65; No. 36, Michael Worvunk, Laborer, \$10.20; No. 37, Leon Koiciviski, Helper, \$14.85; No. 39, F. Borys, Helper, \$7.50; No. 44, Joe Gryberg, Foreman, \$15.00; No. 46, John Tecula, Helper, \$10.35; No. 50, Mike Ross, Blacksmith, \$15.30; No. 54, Y. Michenko, Engine Room Helper, \$13.75; No. 55, Reut, Carpenter, \$3.35; 20 No. 56, K. Kutzo, Laborer, \$9.35; No. 57, Frank Gstz, Laborer, \$8.35; No. 59, Skarbek, Laborer, \$11.20; No. 60, Pet Barbusin, Helper, \$6.65; No. 63, Steve Rat, Painter, \$12.45; No. 66, Felice Sacco, Helper, \$12.20; No. 68, Edward G. Carter, Angle Shear Man, \$16; No. 69, Michele De Vico, Helper, \$14.60; No. 71 Nick Link, Foreman, \$21.40; No. 72, John Link, Riviter, \$18.35; No. 73, Jn. Hart, Helper, \$10.70; No. 74, Antonio Petroli, Helper, \$10.70; No. 77, Geon Posiyonko, Helper, \$12.20; No. 79, Wladavsyk, Helper, \$11.20; 30 No. 80, Charles Kloza, Riviter, \$15.30; No. 83, Louis Keppler, Layer-out, \$13.75; No. 84, Yulie Flyl, Helper, \$12.65; No. 87, Andrew Zydasyk, Helper, \$13.75; No. 88, August Zydasyk, Helper, \$13.75; No. 90, Johan Kowabsyk, Laborer, \$9.15; No. 91, Frederick W. Goeller, Helper, \$11.20; No. 93, William Kneisler, Helper, \$8.90; No. 94, A. Pabz, Rivet Heater, \$11.30; No. 95, Yom Klimek, Laborer, \$9.15; No. 97, Markowhis, Laborer, \$9.15; No. 99, Travorving Axarnora, Rivet Heater, \$11.30; No. 101, John Neminger, Helper, 40

Exhibit D. 1.

\$12.10; No. 103, E. H. Rnoor, Finisher, \$21.40; No. 105, Saul Yansak, Helper, \$12.20; No. 106, Michael Krownzudz, Helper, \$14.25; No. 113, John De Lica, Helper, \$9.15; No. 114, Gennaro Disohep, Helper, \$10.20; No. 115, Yon Goj, Laborer, \$9.15; No. 116, T. Angulski, Laborer, \$10.20; No. 117, H. Wicczesz, Laborer, \$11.20; No. 118, Bill Cronk, Laborer, \$10.20; No. 119, Michael Avantys, Laborer, \$10.60; No. 120, M. Okon, Laborer, \$7.50; No. 121, Jan Bulnowski, Laborer, \$4.15; No. 122, Herman Kietel, Laborer, \$10.85; No. 123, Fred Hock, Laborer Stock Room, \$8.15; No. 124, Mk Pavlo, Laborer, \$9.15; No. 128, Marchetti Denir, Laborer, \$10.20; No. 132, Charles Bielawski, Laborer, \$5.55; No. 133, Cerrets Felice, Laborer, \$10.20; No. 134, Yosep Miziolek, Laborer, \$12.20; No. 139, G. Pistvnsiak, Laborer, \$4.85; No. 140, Andrew Tarneck, \$10.20; No. 142, Walter Hicks, Laborer, \$9.75; John Burns, Laborer, \$28.75; No. 137, Mike Sulu, Laborer, \$7.20; John Kusorski, Laborer, \$7.40; No. 65, Andro Kendra, Laborer, \$11.20; No. 129, J. Stanlis, Laborer, \$11.20; Philip Robask, Laborer, \$12.40; Tony Timinsky, Laborer, \$17.55; George Dray, Laborer, \$14.40; J. A. Ahrens, Laborer, \$12.30; James Torlucy, Laborer, \$18.

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"EXHIBIT B."

30

Newark, N. J., Aug. 7th, 1913.

Received of Thomas W. Jackson check for Twenty-two Hundred Dollars for which I am to deliver to him wage claim assignments of equal amount.

LORENZO C. DILKS,

Receiver for The Goeller Iron Works.

46

Exhibits D. 1 and D. 2.

“EXHIBIT C.”

KNOW ALL MEN BY THESE PRESENTS :

10 That I, James Torlucy, the undersigned, in consideration of \$18.00 the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto Thomas W. Jackson, of Newark, N. J., his executors, administrators and assigns, to his and their own proper use and benefit, the sum of \$18.00 now due to me from The Goeller Iron Works, a corporation created and existing under the laws of the State of New Jersey, as wages for services rendered by me from the 25th day of July, 1913, to the 31st day of July, 1913, inclusive; and I hereby give unto the said Thomas W. Jackson, his executors, administrators and assigns, full power and authority
20 to ask, demand, collect, receive, compound, and give acquittance for the said sum or any part thereof, and in my name or otherwise, but at his or their own cost; to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof I have hereunto set my hand and seal this 11th day of August, 1913.

In the presence of:

30

EXHIBIT D. 2.

Newark Aug 10/14

Mr. L. C. Dilks

Dear Mr. Dilks—

I have at last had Judge Adams approve and sign my claim for money paid to you. Now I want you to see that the interest on this money is not forgotten or overlooked, and should in all fairness be paid out of the Goeller estate—& you are the only one who
40 can get it from that source—

Exhibits D. 2 and D. 3.

It has cost me at the rate of 5% per annum—& I
agreed to let you have it for 6% per annum—

With best regards I am as ever

Yours very truly,

THOMAS W. JACKSON.

I congratulate you on the happy or fortunate out-
come of the Eastern Co claim

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EXHIBIT D. 3.

Newark Sept 2—1914

Mr. L. C. Dilks

Dear Mr. Dilks—

Yours of 11th was reced. and I have been think-
ing I might get over to see you,—but have not been
to N. Y. yet.—There was no intimation from *you* that
you did not wish me to file the claim in the regular
way,—and I was informed from your office that it
should be filed before the 1st of August.

20

A delay to prove by then, would probably have
made their validity questionable,—and you might
have reasonably found a good deal of fault with me
for not preventing your personal responsibility for
the principal and interest, as well—I am informed
that I, as a third person could not make application
to Court for leave to loan the Receiver money.—I am
also told it is very doubtful whether the Court would
even grant the receiver permission to borrow money
to pay priority claims,—you see therefore, that what
was done, was to protect you as far as possible from
the *whole* onus of my loan to you.—The loan as I have
said to you,—was on my high regard for you, and to
help you out of a hole.—I also supposed that you and
Mr. Riker knew what you were talking about when
you said that wage claims were the first claims to

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Exhibits D. 3 and D. 4.

be paid out of the estate,—and also that when you agreed that I should be paid interest on the loan at 6% per annum until paid, that matter also would be unquestioned.

Yours very truly,

T. W. JACKSON.

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EXHIBIT D. 4.

Filed March 5, 1914.

KNOW ALL MEN BY THESE PRESENTS:

20 THAT WE, the undersigned, each in consideration of the payment to him of the amount set opposite his name, receipt whereof is hereby severally acknowledged, have severally sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over
 20 unto Thomas W. Jackson, of Newark, New Jersey, his executors, administrators and assigns, to his and their own proper use and benefit, the sums of money set opposite our respective names, now due to us from the Goeller Iron Works, a corporation created and existing under the laws of the State of New Jersey, as wages for our services from the twenty-fifth day of July, 1913, to the thirty-first day of July, 1913, inclusive, and we each hereby give unto the said Thomas W. Jackson, his executors, administrators and assigns full power, and authority to ask, demand, collect,
 30 sum, or any part thereof, and in our several names, or otherwise, but at his or their own cost to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof we have hereunto set our hands and seals this seventh day of August, 1913.

In the presence of

GORDON JAMES.

Amount due.

40

List of claims omitted by consent.

EXHIBIT D. 5.

Filed March 5, 1914.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

<p>IN THE MATTER OF THE GOELLER IRON WORKS, ALLEGED BANK- RUPT.</p>

*In Bank-
ruptcy.*

10

At Newark, New Jersey, the said District of New Jersey, on the seventh day of August, 1913, came the undersigned, in the County of Essex in the said District of New Jersey, and severally made oath and say that the Goeller Iron Works, a corporation against whom a petition for adjudication of bankruptcy has been filed, was at or before the filing of said petition, and still is justly and truly indebted to each of them in the sum set opposite his name, that the consideration of the said debt in each case is as follows:

20

Wages as a employees of the said bankrupt earned from the twenty-fifth day of July, 1913, to the thirty-first day of July, 1913, inclusive.

That no part of the said debt has been paid. That there are no set offs or counter-claims to the same. That the deponents have not, nor has any person by the order of any of them or to his knowledge or belief for his use had or received any manner of security for the said debt whatever. That the said debt is in each case one existing in open account and due on the third day of August, 1913. That no note has been received for any of said accounts, nor has any judgment been rendered thereon.

30

Subscribed and sworn to before me
this seventh day of August, 1913.

GORDON JAMES,

Attorney at law of New Jersey.

40

List of names attached.

EXHIBIT D. 6.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

IN THE MATTER OF THE GOELLER
IRON WORKS, ALLEGED BANK-
RUPT.

10

To the Hon. Edwin G. Adams, Referee:

The petition of Thomas W. Jackson, respectfully shows to the Court:

FIRST: That your petitioner claims the ownership of certain accounts and contracts of said Goeller Iron Works against various parties and in various amounts as shown by the list on schedule "A" hereunto annexed. All purchased for a present consideration paid to said Goeller Iron Works.

20

SECOND: That at the time of purchasing said accounts and contracts and paying for the same it was represented to your petitioner that each of said contracts and accounts were correct and the work covering the same was completed and that the full amount thereof was due or would become due from each of said parties.

THIRD: That your petitioner has made claim and demand against the receiver appointed herein for said accounts and for the money which may be paid thereunder. That your petitioner has been advised by said receiver that a number of said contracts have not been completed and that unless the same are completed, neither your petitioner or the estate will realize anything from the same.

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FOURTH: Your petitioner has agreed with the receiver to permit the receiver to complete such un-

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Exhibit D. 6.

finished contracts, your petitioner agreeing to furnish the amount required which is estimated by the receiver to be \$7,400.00 and your petitioner has also agreed to allow the receiver to collect the money due or to become due under said contracts or any of them and hold or use the same for the completion of said contracts; all without prejudice to the rights of your petitioner or the creditors of said estate, by reason of the foregoing. 10

FIFTH: Your petitioner is informed that the said receiver has applied to this Court for authority to complete said contracts under the arrangement agreed to between the receiver and your petitioner.

WHEREFORE, your petitioner prays the Court to confirm the arrangement above referred to between the receiver and your petitioner and that this Court grant the prayer of the petition of the receiver in this respect, and that this be done without prejudice to the rights of your petitioner or the receiver or creditors of said estate in reference to any and all of said accounts, contracts and the completion of same. 20

Dated September 9, 1913.

Respectfully submitted,

THOMAS W. JACKSON.

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Exhibit D. 6.

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

10 THOMAS W. JACKSON, being duly sworn, deposes and says that, he is the petitioner mentioned in the foregoing petition that he has read the same and knows the contents thereof and that the same is true to his own knowledge, except as to those matters therein alleged to be stated upon information and belief and that as to those matters he believes it to be true.

THOMAS W. JACKSON.

Subscribed and sworn to before me
 this 9th day of September, 1913.

THEODORE D. GOTTLIEB,
Notary Public of New Jersey.

20 Schalks Brewing Co., \$50; John W. Ferguson Com-
 pany, \$22.87; E. A. Kirch & Co., \$129; Cyrus Currier
 & Sons, \$84; Storms & Co., \$60; Crucible Steel Co.,
 \$350; John Grant's Sons, \$38; Trivett & Walters,
 \$75; Trainer & Ellis, \$24; L. Weingarten, \$2,000;
 Schouler Cement Construction Co., \$70.70; Goerke
 Company, \$2,625; Frederick Fatzler Co., \$1,100; Pro-
 gressive Investment Co., \$365; Roth & Co., \$40; E. M.
 Waldron & Co., \$1,050; J. W. Vliet, \$75; H. M. Dore-
 mus Co., \$2,520; Morrison & Blue Printing Co., \$5.00;
 30 City of Newark, \$3,265; L. E. Schlotterbach Co.,
 \$275; Philip Wolf & Son, \$1,300; David Henry Build-
 ing Co., \$733.01; Samuel Jones & Co., \$300; Isbell-
 Porter Co., \$275; Sigmund Eisner, \$625; Mrs. M. J.
 Cook, \$175; C. Pardee Works, \$1,000; Myer Scale &
 Hardware Co., \$118.82; Public Service Corporation,
 \$734.50; Gordon Lumber & Wrecking Co., \$2,000;
 Gibson & Collins, \$1,630; Presto-Lite Co., \$2,134;
 Thomas Cummings, \$500; Essex Hat Co., \$300; Mrs.
 Louisa McGill, \$100; Benedict & Wending, \$85; Fair-
 child-Baldwin Co., \$225; W. S. Hartshorn, \$240;
 40 Eclipse Tanning Co., \$90; H. M. Treadwell, \$253;
 Herman C. Schneider, \$1,160. Total \$28,141.90.

EXHIBIT D. 7.

Filed at 2.30 o'clock P. M., August 7, 1913.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

IN THE MATTER OF THE GOELLER
IRON WORKS, BANKRUPT.

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Present:

Hon. Edwin G. Adams,
Referee in Bankruptcy.

Upon the involuntary petition herein, the order made and entered herein on the 1st day of August, 1913, appointing a Receiver in Bankruptcy of the above named alleged bankrupt, the order made and entered herein on the 5th day of August, 1913, the annexed petition of the Receiver herein, verified the 7th day of August, 1913, and upon all the proceedings heretofore had herein, it is, upon motion of Edward Grenville Benedict, Attorney for the Receiver,

20

ORDERED that the Receiver in Bankruptcy of the Goeller Iron Works, the alleged bankrupt, be, and he hereby is, authorized as such Receiver to borrow such sums of money not to exceed Fifteen thousand dollars (\$15,000) as shall, in his discretion, be necessary for the continuance of the business of the above named alleged bankrupt, and for the purpose of completing such contracts of the said alleged bankrupt, as may in his judgment, be profitably carried out; and it is further

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ORDERED that the said Receiver be, and he hereby is, authorized, in his discretion, to execute a certificate or certificates of indebtedness as Receiver herein to the persons, firms or corporations from which he may borrow money.

Dated August 7, 1913.

EDWIN G. ADAMS,
Referee.

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Exhibit D. 7.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

IN THE MATTER OF THE GOELLER
IRON WORKS, BANKRUPT.

10 *To the Honorable Edwin G. Adams, Referee in Bankruptcy, United States District Court for the District of New Jersey:*

The petition of LORENZO C. DILKS respectfully shows:

20 FIRST: That heretofore and on or about the 1st day of August, 1913, a petition in involuntary bankruptcy against the above-named Company was filed in the office of the Clerk of the United States District Court for the District of New Jersey; that thereafter, by order duly made and entered herein on the 1st day of August, 1913, your petitioner was appointed receiver in bankruptcy herein, and has duly qualified as such by filing his bond in the sum of Fifty thousand dollars (\$50,000) as required by the order of appointment, and the said bond has been duly approved by the Honorable Edwin G. Adams, Referee herein.

30 SECOND. That the Goeller Iron Works, prior to the filing of the petition against it herein, was engaged as a general contractor, and at that time had various contracts for construction work on various works, schools, theatres, clubs and manufacturing plants, etc., which are in various stages of completion and upon which there are about to become due about Twenty-two thousand dollars (\$22,000); that, in order to enable The Goeller Iron Works, or the estate of The Goeller Iron Works in bankruptcy, to become
40 entitled to the moneys to become due on said con-

Exhibit D. 7.

tracts, it will be necessary to complete the work thereon.

THIRD: That upon the petition of the Receiver herein, an order was duly made and entered herein on the 5th day of August, 1913, by the Honorable Edwin G. Adams, Referee, authorizing your petitioner, as Receiver herein, to continue the business of the above-named alleged bankrupt for a period of thirty days. 10

FOURTH: That you petitioner has made an investigation into the nature of the aforementioned contracts and the general nature of the alleged bankrupt's business, and is of the opinion that the continuance of such business by him as Receiver will be of substantial profit to the estate of the said alleged bankrupt.

FIFTH: That your petitioner has found that it will be impossible for him to continue the business of the above-named alleged bankrupt or to complete the aforementioned contracts, unless he be authorized to borrow moneys for that purpose, and your petitioner is informed and verily believes that he will be able to borrow the necessary moneys upon the issuance by him of receiver's certificates; that the amount which is necessary for immediate need in this connection does not, in the opinion of your petitioner, exceed Fifteen thousand dollars (\$15,000). 20

WHEREFORE your petitioner prays that an order may be made herein authorizing him, as Receiver in Bankruptcy of the Goeller Iron Works, the alleged bankrupt, to borrow moneys not to exceed Fifteen thousand dollars (\$15,000) and to execute a certificate or certificates of indebtedness as Receiver herein to the persons, firms or corporations from which he may borrow such moneys. 30

And your petitioner will ever pray.

LORENZO C. DILKS,
Petitioner. 40

Exhibit D. 8.

UNITED STATES OF AMERICA, }
 DISTRICT OF NEW JERSEY, } ss.
 COUNTY OF ESSEX.

LORENZO C. DILKS, being duly sworn, deposes and says, that he is the Receiver in Bankruptcy of the Goeller Iron Works, alleged bankrupt; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

LORENZO C. DILKS.

Sworn to before me this 7th day of
 August, 1913.

WILLIAM J. DOWD,
M. C. C. of N. J.

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EXHIBIT D. 8.

Filed at 10.30 o'clock P. M., August 5, 1913.

UNITED STATES DISTRICT COURT,
 DISTRICT OF NEW JERSEY.

30 IN THE MATTER OF THE GOELLER
 IRON WORKS, ALLEGED BANK-
 RUPT.

Present:

The Hon. Edwin G. Adams,
 Referee.

40 Upon reading and filing the annexed petition of Lorenzo C. Dilks, verified August 5th, 1913, upon the involuntary petition herein, and upon all other proceedings heretofore had in the above entitled mat-

Exhibit D. S.

ter, it is, upon motion of Edward G. Benedict, attorney for the receiver,

ORDERED that Lorenzo C. Dilks, receiver in bankruptcy of The Goeller Iron Works, the above named alleged bankrupt, be, and he hereby is, authorized to continue in whole or in part, the business of the said The Goeller Iron Works in the State of New Jersey and elsewhere, in the same manner as the same has been heretofore conducted, or in such manner and to such extent as he may deem proper, with full power to purchase, for cash or upon usual credit, such materials and supplies as shall be needed in the conduct of the said business, and to contract and defray any and all expenses in the conduct thereof; and the said receiver is further authorized to sell, for cash or upon the usual credit, in his discretion and in the ordinary course of business, the goods and chattels of the above named alleged bankrupt, with full power to do such other things as may be deemed necessary for the proper continuation and management of the said business for a period of thirty days from the date of the entry of this order, with leave to apply to continue the business longer if, in the judgment of the said receiver, it is advisable or necessary; but no goods to be sold for less than the market price without special order therefor.

Dated August 5, 1913.

EDWIN G. ADAMS,
Referee.

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Exhibit D. 8.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

IN THE MATTER OF THE GOELLER
IRON WORKS, ALLEGED BANK-
RUPT.

1⁰

The petition of LORENZO C. DILKS respectfully shows:

FIRST: That heretofore and on the 1st day of August, 1913, your petitioner was duly appointed receiver in bankruptcy of The Goeller Iron Works, and has duly qualified as such.

2⁰ SECOND: That your petitioner is fully conversant with the affairs and the business of the said The Goeller Iron Works, and has made a careful investigation thereof.

30 THIRD: That at the time of the appointment of your petitioner as receiver herein, the said The Goeller Iron Works was engaged in business as a fabricator of Steel in Newark, New Jersey, and was engaged in the performance of certain uncompleted contracts which when completed will have a value to the estate of the alleged bankrupt herein of approximately fifty thousand dollars (\$50,000). That the said contracts must be completed in order to realize the value thereof, and in order to complete them it will be necessary to do certain further work, purchase material, employ laborers, foreman and others, and in general to continue the business of the above named alleged bankrupt for a period of at least thirty days.

40 FOURTH: Your petitioner deems it to be for the best interests of the creditors of the alleged bankrupt above named that he be authorized to continue its business and to purchase such materials and supplies

Exhibit D. 8.

as may be necessary in the preservation of the property of the alleged bankrupt, and which may be necessary to use in the completion of the said contracts. That the said contracts do not afford sufficient work to profitably conduct the business of the bankrupt, and that it will be necessary in order to so conduct it to obtain new contracts and take on new work.

FIFTH: That your petitioner verily believes that unless he is authorized to continue the business of the alleged bankrupt, to take on new work, and perform contracts now uncompleted, that the uncompleted contracts will result in loss to the estate and consequent loss to its creditors. 10

WHEREFORE your petitioner prays for the entry of an order herein authorizing him as receiver in bankruptcy of the Goeller Iron Works to continue, in his discretion, in whole or in part, the business of the said The Goeller Iron Works in the State of New Jersey or elsewhere in the same manner as it has been heretofore conducted or in such manner and to such extent as he may deem proper and advisable, with full power to purchase, for cash or upon the usual credit, such materials and supplies as may be needed in the conduct thereof, and to contract and defray any and all expenses in the conduct of the said business, to sell, for cash and upon credit, the goods and chattels of the above named alleged bankrupt in the usual course of business, with full power to do such other things as may be deemed necessary for the proper continuation and management of the said business for a period of thirty days, with leave to apply for authority to continue the same longer if it is deemed necessary. And your petitioner will ever pray. 20 30

LORENZO C. DILKS,
Petitioner.

Exhibit D. 8.

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

LORENZO C. DILKS, being duly sworn, deposes and says:

10 That he is the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

LORENZO C. DILKS.

Sworn to before me this fifth day
 of August, 1913.

20 THEODORE D. GOTTLIEB,
Master in Chancery
of New Jersey.

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40

Grounds of Appeal.

Filed July 12, 1916.

New Jersey Court of Errors and Appeals

THOMAS W. JACKSON,

*Plaintiff and Appellant,**vs.*

LORENZO C. DILKS,

*Defendant and Respondent.**Grounds
of Appeal.*

10

The following are the grounds of appeal in the above stated case, namely:

1st: That the Court refused to charge the jury as requested in the first request of the plaintiff to charge the jury.

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2nd: That the Court refused to charge the fifth request of the plaintiff to charge the jury.

3rd: On the exception to the Court's charge, wherein he stated: "Gentlemen, there has been one question brought to my attention while you were out of the room, and that was as to the order for borrowing money being made before or after the loan was made. That is a matter I leave for you to determine, whether or not the evidence shows it was made before or after or whether or not any order was made. It was on the same day; there is a question whether it was made before the conversation at the bank or afterwards, and that is a matter for you to determine. As I told you before, I understood it was before. Counsel has called my attention to the fact that there may be a difference of opinion, so I will leave that to you."

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4th: That the Court refused the request of the plaintiff to direct a verdict for the plaintiff.

40

Grounds of Appeal.

5th: That the Court admitted in evidence, over the plaintiff's exception, the order of the referee in bankruptcy in the United States District Court for the District of New Jersey, in the matter of the Goeller Iron Works, bankrupt, wherein the receiver of said bankrupt, the Goeller Iron Works, was authorized to borrow money, dated August 7th, 1913.

- 10 6th: That the Court admitted in evidence, over the plaintiff's exception, the order of the referee in bankruptcy, in the matter of the bankruptcy of the Goeller Iron Works, dated August 5th, 1913, empowering the receiver to continue the business of said bankrupt, the Goeller Iron Works.

FRANK BENJAMIN,
Counsel for Appellant.

20 *Reviewed July 11, 1916.*

30

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Received July 21, 1900