INDEX.

Order Appointing Receiver.

In Chancery of New Jersey

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY, *et als.*,
Defendants.

On Bill, etc.
Order Appointing Receiver.

This matter being opened to the Court by Joseph Steiner and Howard Isherwood, Solicitors for and of Counsel with the above named complainant, and an order having been made in this cause on the Fifteenth day of March, 1926, wherein among other things the creditors and stockholders of the defendant corporation were ordered to show cause before this Court on the thirtieth day of March, 1926, at 10:00 o'clock in the forenoon of that day or as soon thereafter as this matter can be heard, at the Chancery Chambers, Prudential Building, Newark, N. J., why said defendant corporation should not be adjudged insolvent, and why the said receivership should not be made permanent under the provisions of "An Act concerning Corporations (Revision of 1896)" and its supplements and amendments, according to the prayer of said Bill of Complaint and why Walter Sherwood, Receiver

heretofore appointed in this cause, should not be continued; and proof of mailing a copy of said order to the Creditors and Stockholders of said defendant corporation being now presented to the Court and being duly filed, and no cause being shown to the contrary;

It is on this thirtieth day of March, 1926, ORDERED that Walter Sherwood be and he hereby is continued as Receiver of the above named defendant corporation with all the powers and authorities incident thereto and conferred upon him by the order heretofore made appointing him Receiver, and especially by the Act entitled; "An Act Concerning Corporations (Revision of 1896)" and the supplements thereto and the acts amendatory thereof;

And it is further ORDERED that the restraint contained in the order to show cause as against the defendant Max Chopik and the Sheriff of the County of Essex be continued until further order of this Court.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Order of Sale.

IN CHANCERY OF NEW JERSEY.

Between LINCOLN MATERIALS COMPANY, INC., *Complainant,* and GOODWIN CONSTRUCTION COMPANY, *Defendant.*	On Bill, &c. Order of Sale.

This matter being opened to the Court by Joseph Steiner, of Counsel with Walter Sherwood, the Receiver of the above defendant company, and an Order having been made in this cause on the sixth day of January, 1927, wherein, among other things, the creditors of the defendant corporation were ordered to show cause before this Court on the date hereof at ten o'clock in the forenoon of that date, or as soon thereafter as the matter might be heard at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, why the said receiver should not carry out a certain contract entered into by him with John A. McKenna for the sale of premises belonging to the defendant corporation at the time of its insolvency, lying, situate and being in the City of East Orange, County of Essex and State of New Jersey, and why the said contract in all its parts should not be ratified and confirmed, and further why the said property should not be sold free and clear and discharged of liens of any persons or corporations set out in said Rule to Show Cause, and of any additional persons or corporations who might have notice of said order;

and proof of mailing or serving of a copy of said Order upon the said creditors or upon their solicitors, pursuant to the terms of said order, being now presented to the Court and being duly filed, and no cause being shown or appearing why said contract for the sale of the aforesaid premises should not be ratified and confirmed,

It is, on this eighteenth day of January, 1927, ORDERED, that the aforesaid contract for the sale of premises be and the same is in all things ratified and confirmed, and that the said receiver proceed to make conveyance of the said premises according to the conditions of said contract for sale, and that the said receiver hold the monies derived therefrom to abide the further order of this Court.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

Receiver's Report and Account.

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN MATERIALS CO., INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
Defendant.

Receiver's Report and Account.

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

The petition and report of Walter Sherwood respectfully shows unto your Honor and alleges:

1. That he is the receiver of the above named defendant corporation duly appointed and acting as such, having furnished his bond pursuant to the order of his appointment and having taken his oath pursuant to the Statutes of the State of New Jersey in such case made and provided.

2. That Joseph Steiner is his attorney duly appointed by an order of this Court and acting as such.

3. That your petitioner did, after his appointment, take possession of all of the assets of the defendant corporation which assets are more particularly set forth in Schedule "A" hereunto annexed and made a part hereof.

4. That your petitioner acting under and pursuant to an order of this Court, did make sale of part of the assets of the defendant corporation, consisting of an unfinished twenty-four (24) family apartment house known and designated as #14 North Walnut Street, East Orange, New Jersey, which property is more particularly described in

Schedule "A" hereunto annexed. That under the terms of the contract of said sale, petitioner completed the erection of said house and conveyed said completed house to one, John A. McKenna, the purchaser in said contract, and received the sum of ($128,500) from him. In addition to said purchase price your petitioner has had other incomes as receiver all of which income items are more particularly set forth in Schedule "B" hereunto annexed and marked Schedule "B."

5. That your petitioner, acting in his capacity as receiver of the defendant corporation, did incur various and divers expenditures and disbursements which items are more particularly set forth in Schedule "C" hereunto annexed and made a part hereof.

6. That your petitioner has in his possession a balance of ($92,565.96) to be disbursed as administration expenses and for payments to creditors and the amounts of their claims and the order of priority of said claims is specifically set forth in Schedule "D" hereunto annexed and made a part hereof.

7. Your petitioner prays that this his report may be passed upon and allowed and that he be granted an allowance as receiver, and that his attorney, Joseph Steiner, be granted an allowance as attorney for said receiver and that after payment of the administration expenses the balance be divided among the creditors as set forth in Schedule "D" and that your petitioner be discharged from all further duties and liabilities with respect to said trust to the extent of the funds for which he has accounted.

And your petitioner will ever pray, etc.

WALTER SHERMAN.

SCHEDULE "A."

ASSETS OF THE COMPANY.

Receiver charges himself with having taken all of the assets of the defendant, Goodwin Construction Company, consisting of the following:

(a) Unfinished 24 family apartment house known and designated as #14 North Walnut Street, East Orange, New Jersey, which tract or parcel of land is more particularly described as follows:

"Premises in the City of East Orange, County of Essex and State of New Jersey— Beginning at a point in the easterly line of North Walnut Street said point being distant one hundred and twenty-five feet and thirty one one-hundredths of a foot from the intersection of the easterly line of North Walnut Street and the northerly line of Main Street; thence south forty-five degrees thirty eight minutes east one hundred and nine feet to a point in the property line of the City of East Orange; thence along said lands of the City of East Orange north fifty-four degrees east seventy two feet and ninety four one-hundredths of a foot; thence still along lands of the City of East Orange forty-five degrees thirty-eight minutes west one hundred and twenty-nine feet and ninety-seven one-hundredths of a foot to the easterly line of North Walnut Street; thence along said line south thirty-seven degrees twenty-five minutes west seventy-two and forty-four one-hundredths of a foot to the point and place of BEGINNING."

(b) Lot on Eagle Rock Avenue more particularly described as follows:

"Premises in the Town of West Orange—Beginning at a point in the new easterly line of Eagle Rock Avenue distant one hundred twenty-nine feet and sixty-five one hundredths of a foot northerly from the intersection of said new easterly line of Eagle Rock Avenue with the northerly line of Ashwood Terrace in line of lands recently conveyed by Anne E. Williams and Marion Williams to one Felix Karam; thence running along line of said land and with line of lands conveyed by Anne E. Williams & Marion Williams to Robert L. Chapman, Leo Silver and Raymond Kreest south sixty-seven degrees forty-seven minutes east one hundred thirty feet and seventeen one hundredths of a foot; thence running north twenty-nine degrees twenty-five minutes east fifty feet to a mark on a rock situated in line of lands now or formerly of Virginia B. Williams; thence running along same north one degrees fifty-two minutes east ninety feet and thirty-five one hundredths of a foot to a station situated in the southerly line of lands now or formerly of Michael Dooley; thence running along same north seventy-six degrees twenty-five minutes west one hundred twenty-three feet and ninety-seven one hundredths of a foot more or less to an iron pipe situated in the new easterly line of Eagle Rock Avenue and thence running along same south thirteen degrees thirty-five minutes west one hundred seventeen feet and four one hundredths of a foot to the point and place of BEGINNING."

SCHEDULE "B."

Receiver charges himself with having received the following items:

Nov. 29, 1926	Rocco E. Fornatoro	$1,000.00
Dec. 6, 1926	John A. McKenna	1,000.00
Jan. 22, 1927	John A. McKenna	3,000.00
June 27, 1927	John A. McKenna	6,000.00
27, 1927	Interest	1.86
Dec. 29, 1926	Interest	1.81
Feb. 28, 1927	Interest	14.51
Mar. 31, 1927	Interest	9.58
Apr. 30, 1927	Interest	6.57
May 27, 1927	Drummond—Rent	70.00
June 2, 1927	Brohm	55.00
	Murphy	65.00
	Bloomer	75.00
May 27, 1927	Interest	2.84
June 22, 1927	John Stegmayer—Rent	65.00
July 2, 1927	Brohm—Rent	55.00
	Reichert—Rent	20.00
July 25, 1927	Lucas—Deposit Rent	10.00
	Willard—Deposit Rent	5.00
	Love—Deposit Rent	55.00
Aug. 2, 1927	Willard—Rent	60.00
3, 1927	John Stegmayer—Rent	65.00
	Herbert Brass—Deposit Rent	35.00
11, 1927	F. J. Jarosch—Rent	75.00
11, 1927	Bloomer—Rent	150.00
	Reichert—Rent	40.00
	Brohm—Rent	55.00
	Lucas—Rent	55.00
	Richardson—Rent	10.00
26, 1927	Bragg—Rent	35.00
27, 1927	Reichert—Rent	60.00
30, 1927	Brohn—Rent	55.00
Sept. 1, 1927	John Lucas—Rent	65.00
	Charles Frost—Rent	25.00
6, 1927	Love—Rent	55.00

	6, 1927	Willard—Rent	65.00
	7, 1927	Drummond—Rent	140.00
	7, 1927	Williamson—Rent	65.00
		Stegmayer—Rent	65.00
		Richardson—Rent	40.00
	7, 1927	Bloomer—Rent	75.00
10	7, 1927	Drummond—Rent	70.00
	12, 1927	Reichert—Rent	60.00
		Hearn—Rent	25.00
	14, 1927	Paul Westin—Rent	5.00
		Anable—Rent	10.00
	19, 1927	Cuier—Rent	55.00
		Anabler—Rent	60.00
		Weston—Rent	65.00
		Brohn—Rent	55.00
		Hearn—Rent	40.00
20	22, 1927	Beatty—Rent	50.00
	24, 1927	Beatty—Rent	25.00
		Frost—Rent	50.00
	24, 1927	Meaner—Rent	65.00
	27, 1927	Steffens—Rent	28.00
	Oct. 1, 1927	Weston—Rent	55.00
		Steffins—Rent	47.00
	3, 1927	Lucas—Rent	67.50
		Love—Rent	60.00
		Hurse—Rent	55.00
	4, 1927	Bragg—Rent	70.00
30		Bloomer—Rent	75.00
		Jarosch—Rent	75.00
		Willard—Rent	65.00
		Reichert—Rent	60.00
		Drummond—Rent	70.00
		Stegmayer—Rent	65.00
	10, 1927	Geo. W. Baptiste—Rent	10.00
	15, 1927	Garvin—Rent	10.00
		Williamson—Rent	5.00
		Weston—Rent	5.00
40	18, 1927	Brohn—Rent	55.00
	13, 1927	Baptiste—Rent	60.00

17, 1927	Ekelund—Rent	60.00
	Drummond—Dep. Rent	70.00
	Nelson—Rent	65.00
Nov. 2, 1927	Meimer—Rent	65.00
	Weston—Rent	65.00
	Lucas—Rent	67.50
	Stegmayer—Rent	65.00
	Love—Rent	60.00
2, 1927	Weston—Rent	70.00
	Willard—Rent	65.00
	Jarosch—Rent	75.00
	Hern—Rent	65.00
	Richardson—Rent	50.00
4, 1927	Reichert—Rent	60.00
	Amable—Rent	65.00
	Drummond—Rent	70.00
	Bloomer—Rent	75.00
	Steffens—Rent	75.00
	Bragg—Rent	70.00
Oct. 7, 1927	Hines—Rent	65.00
	Frost—Rent	75.00
	Williamson—Rent	70.00
	Caire—Rent	75.00
Nov. 9, 1927	East Orange Water Department—Return of Meter Deposit	12.00
16, 1927	Beatty—Rent	75.00
	John A. McKenna	117,836.08
29, 1927	Interest	50.07
Dec. 16, 1927	Huegel & Clark—Refund on Ins.	42.24
29, 1927	Interest	170.05
		$134,102.61

SCHEDULE "C."

Receiver charges himself with having incurred the following expenses:

Dec.	12, 1926	Rocco E. Fornataro—Ret. of Deposit	$1,000.00
Jan.	27, 1927	Hugh Knowles—Watchman	150.00
	28, 1927	Frank Connington—Carpenter	56.00
	27, 1927	Schryver & Geylor—Bond	50.00
	29, 1927	Milwaukee Mechanics Insurance Co.—Insurance	499.95
Feb.	4, 1927	Frank Connington—Carpenter	61.60
	4, 1927	Hugh Knowles—Watchman	40.00
	4, 1927	J. Crawford—Labor	24.00
	5, 1927	City of East Orange—Old Water Bill	33.67
	11, 1927	Frank Connington—Carpenter	61.60
	11, 1927	Hugh Knowles—Watchman	20.00
	11, 1927	J. Crawford—Labor	26.40
	11, 1927	John Hinke—Steamfitter Helper	18.00
	11, 1927	Joseph Albert—Steamfitter	24.00
	10, 1927	Orange Lumber Co.—Lumber	31.11
	10, 1927	Orange Sash Door & Glass Co.—Lumber	94.09
	10, 1927	Benj. Myer Co.—Hardware	8.20
	18, 1927	Frank Connington—Carpenter	61.60
	18, 1927	Hugh Knowles—Watchman	20.00
	18, 1927	John Hinke—Steamfitter Helper	49.50
	18, 1927	Joseph Albert—Steamfitter	71.50
	25, 1927	Columbia Marble Works—Marble	400.00
	26, 1927	Frank Connington—Carpenter	61.60
	25, 1927	Hugh Knowles—Watchman	20.00
	25, 1927	John Hinke—Steamfitter Helper	40.50
	25, 1927	Joseph Albert—Steamfitter	58.50
	28, 1927	Schnarr & Rue—Tiler	500.00
	28, 1927	Bosman & Cussin—Doors	263.36
Mar.	1, 1927	Henry B. Geddis Co.—Plumbing	1.75
	1, 1927	Ornage Lumber Co.—Lumber	75.26
	2, 1927	Bosman & Cussin—Doors	59.25
	3, 1927	N. Cohen—Hardware	7.00
	3, 1927	Lincoln Materials Co.—Mason Materials	14.13
	4, 1927	Frank Connington—Carpenter	61.60

4, 1927	Hugh Knowles—Watchman	20.00	
4, 1927	John Hinke—Steamfitter Helper	49.50	
4, 1927	Joseph Albert—Steamfitter	71.50	
8, 1927	E. E. Steiner & Co.—Smoke Pipe	128.00	
11, 1927	Frank Connington—Carpenter	61.60	
11, 1927	Hugh Knowles—Watchman	20.00	
11, 1927	John Hinke—Steamfitter Helper	49.50	10
11, 1927	Joseph Albert—Steamfitter	71.50	
14, 1927	John Hinke—Steamfitter Helper	13.50	
14, 1927	Joseph Albert—Steamfitter	19.50	
14, 1927	Howard Plumbing Co.—Plumbing	442.50	
14, 1927	Orange Sash & Door & Glass Co.—Lumber	44.54	
14, 1927	Benj. Myer—Hardware	39.78	
16, 1927	Schnarr & Rue—Tiler	630.00	
17, 1927	Walter K. Sherwood—Plaster Trowels	1.00	
	Sand Trowels	.70	
	Brush	.55	20
	G. J. Unions	.60	
18, 1927	Frank Connington—Carpenter	61.60	
18, 1927	Hugh Knowles—Watchman	20.00	
18, 1927	Lester Colloton—Plumber	26.00	
18, 1927	Walter K. Sherwood—1″ Nipple	1.58	
23, 1927	Henry B. Geddes & Co.—Plumbing	3.22	
25, 1927	Frank Connington—Carpenter	61.60	
25, 1927	Hugh Knowles—Watchman	20.00	
25, 1927	Lester Colloton—Plumber	71.50	
25, 1927	A. Romder—Plumber Helper	38.20	
25, 1927	Columbia Marble Works—Marble	600.00	30
25, 1927	Walter K. Sherwood—Pd. Roseville Plumbing Supply Co.	4.80	
29, 1927	Cash—Plumbers—Lester Colloton	32.50	
	A. Romder	16.00	
Apr. 1, 1927	Frank Connington—Carpenter	61.60	
1, 1927	Hugh Knowles—Watchman	20.00	
2, 1927	Newark Glass Co.—Glass	11.50	
2, 1927	City of East Orange—Water	4.99	
8, 1927	Frank Connington—Carpenter	61.60	
8, 1927	Hugh Knowles—Watchman	20.00	
8, 1927	Jacobson & Alpert—Painting	200.00	40

	13, 1927	Alexander T. Millar—Mason Work	401.60
	15, 1927	Frank Connington—Carpenter	61.60
	15, 1927	Hugh Knowles—Watchman	20.00
	15, 1927	Lester Colloton—Plumber	58.50
	15, 1927	A. Romber—Plumber Helper	28.80
	18, 1927	Schryver & Geyler—Comp. Policy Cont. Public Lia.	60.50
	23, 1927	Frank Connington—Carpenter	61.60
	23, 1927	Hugh Knowles—Watchman	20.00
	23, 1927	Lester Collotin—Plumber	71.50
	23, 1927	A. Ronder—Plumber Helper	35.00
	23, 1927	J. Crawford—Labor	6.50
	23, 1927	Jacobson & Alpert—Painting	400.00
	23, 1927	City of East Orange—Water Main	144.20
	26, 1927	Walter K. Sherwood—Plumber Helper—A. Ronder	9.60
	29, 1927	Hugh Knowles—Watchman	20.00
	29, 1927	Walter K. Sherwood—Lester Colloton—Steamfitter	71.50
	29, 1927	Frank Connington—Carpenter	61.60
	29, 1927	J. Crawford—Labor	13.00
May	6, 1927	Frank Connington—Carpenter	61.60
	6, 1927	Hugh Knowles—Watchman	20.00
	6, 1927	Lester Colloton—Plumber	71.50
	6, 1927	John Butler—Plumber Helper	32.00
	11, 1927	Wm. O'Connell—Labor	10.00
	13, 1927	Frank Connington—Carpenter	61.60
	13, 1927	Hugh Knowles—Watchman	20.00
	13, 1927	Lester Colloton—Plumber	71.50
	13, 1927	John Buttler—Plumber Helper	38.20
	17, 1927	Irvington Electric Co.—Electrical Work	1,000.00
	19, 1927	Newark Sheet Metal & Kalamein Co.—Fire Proof Doors	57.00
	20, 1927	Peter Ford—Labor	2.60
	20, 1927	Mable Moore—Cleaning	25.90
	20, 1927	Lester Colloton—Plumber	71.50
	20, 1927	Frank Connington—Carpenter	61.60
	25, 1927	Schryver & Geylor—Bond	50.00
	25, 1927	Jacobson & Alpert—Painting	200.00

25, 1927	Alexander T. Millar—Mason Work	45.60	
25, 1927	Frank Connington—Carpenter	61.60	
25, 1927	Lester Colloton—Plumbing	71.50	
25, 1927	Mabel Moore—Cleaning	22.50	
June 1, 1927	James Clinch—Janitor	60.00	
3, 1927	Mabel Moore—Cleaning	25.90	
8, 1927	Lincoln Materials Co.—Mason Materials	14.32	10
10, 1927	Stove Manufacturers Corp.—Smoke Pipe—Gas Range	14.49	
10, 1927	Raymond D. Schott—Signs	8.00	
20, 1927	James Clinch—Janitor	16.53	
22, 1927	Orange Lumber Co.—Lumber	25.82	
July 5, 1927	Stove Manufacturing Corp.—Smoke Pipe—Gas Range	13.40	
5, 1927	Watchung Coal Co.—Coal	11.00	
6, 1927	Walter K. Sherwood—Cleaning Materials	4.23	
14, 1927	James Clinch—Janitor	60.00	20
15, 1927	Frank Connington—Carpenter	66.00	
Aug. 1, 1927	James Clinch—Janitor	60.00	
3, 1927	Moora Shade & Awning Co.—Shades	136.50	
11, 1927	James Clinch—Supplies	4.07	
12, 1927	Irvington Electric Co.—Electric Work	200.00	
12, 1927	Henry B. Geddes & Co.—Plumbing	156.62	
13, 1927	Frank Cozzoline—Leases	2.81	
30, 1927	Universal Stationery Co.—Rent Book	1.50	
Sept. 10, 1927	James Clinch—Janitor	60.00	
13, 1927	James Clinch—Janitor	6.76	
13, 1927	Howard Plumbing Co.—Plumbing	500.00	30
13, 1927	J. Standberg—Floor Scraping	193.94	
14, 1927	E. R. Saxon—Plumbing Work	125.00	
29, 1927	Jacobson & Alpert—Painting	500.00	
29, 1927	Irvington Electric Co.—Electrical Work	200.00	
Oct. 5, 1927	Irvington Electric Co.—Electrical Work	300.00	
5, 1927	James Clinch—Janitor	60.00	
7, 1927	Mrs. T. Gavin—Return of Deposit on Apr.	10.00	
11, 1927	Garlock & Mishelf—Rent	32.00	
11, 1927	Lincoln Materials Co.—Mason Materials	3.41	
	Drummond Check returned—not good	70.00	
11, 1927	Francis Lang Co.—Plumbing	9.05	40

	13, 1927	Stephen C. Fredericks—Steam Fittings.....	22.80
	19, 1927	Irvington Electric Co.—Electrical Work	500.00
Nov.	3, 1927	Jacobsen & Alpert—Painting	200.00
	3, 1927	Schryer & Geylor—Insurance	22.23
	4, 1927	F. C. Wieland—Insurance—Fire	247.50
	16, 1927	W. S. Maltby—Commission of Sale on property	1,706.25
	16, 1927	W. S. Maltby—Do	1,706.25
	16, 1927	Jacobson & Alpert—Painting	700.00
	21, 1927	Benj. Myer Co.—Hardware	318.80
	21, 1927	Howard Plumbing Co.—Plumbing materials..	444.26
	21, 1927	Kantor & Kantor, Attys. for Columbia Marble Works—Marble	755.00
	21, 1927	Winchester & Muhlberg, Inc.—Screens.....	343.20
	21, 1927	Schnarr & Rue—Tiling	60.00
	21, 1927	Arthur G. Tewellas—Gas Ranges & Ice Boxes	1,304.00
	21, 1927	S. Rabinowitz Iron Works—Iron Door & Fire Escapes	100.00
	21, 1927	Peter Russo—Dumbwaiters	240.00
	21, 1927	Hugh Knowles—Watchman	732.86
	28, 1927	Frank Connington—Carpenter	64.00
Dec.	10, 1927	Pride of Newark B/L Ass'n.—Mortgage.....	14,036.92
	13, 1927	Altman & Altman—Fee	250.00
Jan.	3, 1928	City of East Orange—Water Bill	44.81
	6, 1928	John T. Van Riper—Atty. Kewanee Boiler Co.—Judgment	542.82
	10, 1928	W. A. Clapp, Collector—Tax Sale	2,282.62
Feb.	8, 1928	John Gallina—Mason Work	40.00
	8, 1928	Watchung Coal Co.—Coal	99.00
Mar.	20, 1928	East Orange Tax Collector—Taxes	1,154.25
			$41,536.65

SCHEDULE "D."

Claims proven and filed with the receiver in the order of their respective priority as determined by the receiver and in amounts proven and allowed by the receiver are herein set forth:

1. Samuel Werbel—on account of a mortgage made by the Goodwin Construction Company to him in the sum of $60,000; the receiver finds that Samuel Werbel is entitled to priority in the sum of $56,000.00
on account of the principal of said mortgage and interest on said mortgage from the date of its making until date of the appointment of the receiver in the sum of 3,010.00

making a total due to Samuel Werbel for which he is entitled priority of payment $59,010.00
Receiver finds that $4,000, the balance of said mortgage, and insurance advanced by Mr. Werbel in the sum of $658.67 should be accounted for among the general claims of this estate and paid with them.

2. The claimants hereinbelow listed proved their claims before the receiver in the amounts set opposite their names and are entitled to a pro rata payment among them after the payment of the above set forth mortgage:

(a) Levy Bros. Co., Inc.	$4,049.00	
(b) Max Chopik	1,774.65	
(c) Passaic-Bergen Lumber Co.	4,809.95	
(d) John R. Blair Company	1,665.85	
(e) Consolidated Expanding Metals Co.	620.00	
(f) Mayer-Bez Stone Company, Inc.	400.00	
(g) Nathan Cohen	397.88	
(h) Pierce, Butler & Pierce	600.00	
(i) Sterling Engineering Company	627.00	
(j) Lincoln Materials Company	14,329.57	
(k) Henry R. Isenberg Co.	3,900.00	
(l) Isaac Ginsburg	763.00	
		33,936.90

3. Newark Holding Company—on account of a mortgage held by it covering the premises in question which mortgage is in the principal sum of $15,000.00
and interest thereon from the date of its making until date of the appointment of the receiver in the sum of 1,082.50

making a total due to the Newark Holding Company to be paid after the payment to Samuel Werbel and the items set forth in paragraph 2 ..... 16,082.50

4. The claimants hereinbelow listed proved their claims before the receiver in the amounts set opposite their names and are entitled to payment as general claimants after the payment of the above set forth claims:

(a) S. Rabinowitz Iron Works		$2,127.00	
(b) Louis Schrenell		6,400.00	
(c) K. D. Flooring Company		602.64	
(d) Commercial Casualty Insurance Company		263.70	
(e) Samuel Werbel for principal of mortgage	$4,000.00		
for insurance advanced ...	658.67	4,658.67	
			14,052.01
Total			$123,081.41

Receiver's Report and Account.

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

WALTER SHERWOOD, being duly sworn according to law, upon his oath, deposes and says:

I am the receiver of the Goodwin Construction Company, defendant in the within action. I have read the within report and account and state that it contains a just and true statement and account of the moneys paid to me as received of the Goodwin Construction Company and that the sums of money in said report mentioned as having been paid by me for the several purposes therein mentioned were actually and truly so paid by me for the said purposes therein mentioned, and that the said report and account and all the matters and things therein contained are true to the best of my knowledge, information and belief.

WALTER SHERWOOD.

Subscribed and sworn to before me }
this 29th day of February, 1928. }

CHARLES SEELEY,
An Attorney-at-Law of
N. J.

Petition.

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY, INC.,
Defendant.

On Bill, &c.

Appeal by Samuel Werbel from Determination of Receiver.

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

The Petition of Samuel Werbel respectfully shows that:

1. He is a creditor of Goodwin Construction Company, by reason of being the holder of a bond of said Defendant Company in the principal sum of $60,000.00, dated April 22, 1925, which provides, among other things, that interest is payable thereon at the rate of 6% per annum, and that your Petitioner is obligated thereunder to protect and preserve the mortgaged premises and to insure the same and to advance and pay the premiums thereon, and that said Bond is secured by a mortgage in the aforesaid sum of $60,000.00, on premises of it, designated as #14 North Walnut Street, in the City of East Orange, County of Essex, State of New Jersey, and that he presented his claim to the Receiver appointed in this cause for allowance. Under the terms of Petitioner's mortgage, as set forth in next preceding paragraph, he ad-

vanced premiums in the amount of $658.67 on policies of insurance which were necessary, placed for the protection of the building erected on the mortgaged premises, for which amount, your Petitioner presented a claim to said Receiver and asked that it be added to and become a part of the principal of Petitioner's mortgage, pursuant to the terms of said mortgage. Said Receiver refused to so allow your Petitioner, but did allow the aforesaid sum as a general claim against the estate.

2. The said Receiver allowed your Petitioner's claim on said mortgage to the extent of $56,000.00 and further allowed interest on the aforesaid sum of $56,000.00, from the said bond and mortgage, to wit, April 22, 1925, to March 15, 1926, the date of the appointment of said Receiver as aforesaid, amounting to the sum of $3,010.00, but refused to allow your Petitioner interest on either the principal amount of said mortgage of $60,000.00, or the sum of $56,000.00 from the date of the appointment of said Receiver to the date of the payment to your Petitioner of the said sum of $56,000.00.

3. Your Petitioner conceives that he is aggrieved by the said refusal of said Receiver to allow your Petitioner interest on the sum of $56,000.00, conceded by said Receiver to be due to your Petitioner on his mortgage, from the date of the appointment of said Receiver until such time as the aforesaid sum of $56,000.00 should be paid to your Petitioner and insists that your Petitioner is entitled to be allowed interest at 6% per annum on the aforesaid sum of $56,000.00, not only from the date of said mortgage to the appointment of said Receiver, but also from the date of the appointment of said Receiver to the date when the

aforesaid sum of $56,000.00 is paid to your Petitioner. Your Petitioner is also aggrieved because said Receiver refused to add the aforesaid insurance premiums, advanced by your Petitioner, to the amount of the principal due on Petitioner's mortgage and insists that Petitioner is entitled to have the amount of such insurance premiums advanced, to wit, $658.67, added to the principal of said mortgage and considered as a prior lien and encumbrance to the other creditors, to the same extent and to the same priority as said mortgage.

4. And your Petitioner respectfully appeals from said determination of said Receiver refusing as aforesaid to pay the interest due to your Petitioner to this Honorable Court, and prays that the determination of said Receiver, as to the payment of said interest may be reversed, and as to the priority of your Petitioner's claim for insurance premiums advanced as aforesaid, may be reversed, and such order made in the premises as shall be agreeable to equity and good conscience.

And your Petitioner will ever pray, etc.

SAMUEL WERBEL,
Petitioner.

SAUL & JOSEPH E. COHN,
Solicitors for Petitioner.

C. WALLACE VAIL,
Of Counsel with Petitioner.

Order Dismissing Appeal From and Exceptions to Receiver's Report.

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
Defendant.

Order Dismissing Appeal From and Exceptions to Receiver's Report.

This matter being opened to the court by Joseph Steiner, solicitor for and of counsel with Walter K. Sherwood, Receiver, in the presence of Keating & Keating, appearing for John R. Blair Company and K. D. Flooring Company, exceptants, Levy, Fenster & McCloskey, solicitors of Levy Brothers, exceptants, C. Wallace Vail, appearing for Samuel Werbel, appellant and Merrit Lane appearing for Newark Holding Company, appellant and the Receiver's Report having been brought on for hearing and the Court having heard the argument of counsel for the Receiver and the argument of counsel opposed and having read and considered all exceptions filed and also the appeals of all persons and corporations appealing from the Receiver's Report, it is on this 23rd day of May, 1929,

ORDERED, ADJUDGED AND DECREED, that all exceptions filed be and the same hereby are dismissed, and that all appeals filed be and the same hereby are dismissed and that the Receiver's Report be and the same hereby is in all respects sustained and confirmed and it is further

Order Dismissing Appeal and Exceptions.

ORDERED that the Receiver hereby is authorized and instructed to disburse first from the monies in his hands the residue of the estate to the persons hereinafter mentioned and in the mode and manner hereinafter prescribed:

To: (a) Levy Bros. Co., Inc.
(b) Max Chopik
(c) Passaic-Bergen Lumber Co.
(d) John R. Blair Company
(e) Consolidated Expanding Metals Co.
(f) Mayer-Bez Stone Company, Inc.
(g) Nathan Cohen
(h) Pierce, Butler & Pierce
(i) Sterling Engineering Company
(j) Lincoln Materials Company
(k) Henry R. Isenberg Co.
(l) Isaac Ginsburg

the full amounts of their claims with accrued interest from the date of the filing of their respective claims provided there is enough money in the estate to pay them in full, if not, then to each of the claimants above listed in such sums as the proportion of their filed claims bears to the total amount in the Receiver's hands.

After the payment of the aforesaid claims in full, if there is sufficient in the Receiver's hands to pay them in full and a remaining surplus, the surplus then to be applied to the mortgage held by the Newark Holding Company with accrued interest from the date of its proof to date, the balance, if any, then left in the Receiver's hands to be distributed among the following general creditors:

(a) S. Rabinowitz Iron Works
(b) Louis Schrenell
(c) K. D. Flooring Company
(d) Commercial Casualty Insurance Company
(e) Samuel Werbel

these claims to be paid in full if the funds in the Receiver's hands will reach and if not, the distribution to be made equitable dependent upon the proportion which the claims as determined by their amounts bear to the entire fund still remaining in the Receiver's hands, and it is further

ORDERED, ADJUDGED AND DECREED, that after disbursing the monies now in his hands in accordance with the findings made and the provisions set forth in this Order that the Receiver file a memorandum of his disbursements with the Clerk of this Court and that after the filing of the aforesaid statement and the carrying out of the directions of this Court in this Order made by the said Receiver that the said Receiver be discharged from all further duties and liabilities with respect to the said trust and that the said Bond heretofore filed by the Receiver be and the same hereby is discharged.

Respectfully advised,

EDWIN ROBERT WALKER,
Chancellor.

ALONZO CHURCH,
V. C.

Amendment.

(Filed .)

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
et als.,
Defendants.

On Final Decree.
Amendment.

This matter being opened to the Court by Joseph Steiner, Solicitor for and of counsel with Walter K. Sherwood, Receiver, and it now being made to appear that in drawing the Final Order in this matter made and dated the 23rd day of May, 1929, through inadvertence the Receiver's recommendation that accrued interest be paid to Samuel Werbel on his first mortgage from the date of the mortgage to the date of the receivership was omitted from said Order, and good cause being shown, it is thereupon on this 28th day of June, 1929,

ORDERED, ADJUDGED and DECREED that the said Final Decree and Order confirming Receiver's Report and dismissing the Appeals and Exceptions be amended by inserting the following provision:

"Prior to the payment of any sum or sums of money to any of the creditors, there shall first be paid to Samuel Werbel the sum of $3,010.00, being accrued interest on his first

mortgage from the date of the mortgage to the date that the Receiver was appointed."

Respectfully advised,

ALONZO CHURCH,
V. C.

E. R. WALKER,
C.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
Defendant.

On Bill, &c.
Notice of Appeal.

PLEASE TAKE NOTICE, that Samuel Werbel, appeals from so much of the order of the Chancellor made on the advice of Honorable Alonzo Church, Vice Chancellor, bearing date May 23, 1929, and as amended by order of June 28, 1929, as dismisses the appeal of Samuel Werbel, and overrules the exception of said Samuel Werbel to the report of the receiver and as confirms the action of the receiver with respect to the claim of the said Samuel Werbel, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated July 25, 1929.

SAUL & JOSEPH E. COHN,
Solicitors of Samuel Werbel.

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

IRWIN R. HELLER,
Of Counsel with Samuel Werbel.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LINCOLN MATERIALS COMPANY, INC., *Complainant,*

and

GOODWIN CONSTRUCTION COMPANY, *Defendant.*

On Appeal of Samuel Werbel, Appellant, and Walter K. Sherwood, Receiver of Goodwin Construction Company.

Petition of Appeal.

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

The humble petition of Samuel Werbel, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made by his Honor Edwin Robert Walker, on the advice of Honorable Alonzo Church, Vice Chancellor, bearing date the 23rd day of May, 1929, and the amendment of said final decree dated June 28, 1929, in a cause wherein Lincoln Materials Company, Inc., was complainant and Goodwin Construction Company was defendant, to wit: That the said final decree adjudges that the appeal of your petitioner from the determination of the receiver which directed that your petitioner was entitled only to the sum of

$56,000.00 as principal on account of the mortgage of your petitioner, together with interest at the rate of 6% per annum from its date, until the appointment of the receiver, be dismissed, and that said final decree confirms said receiver's report and directs that the said receiver pay to the said Samuel Werbel, prior to the payment of any sum or sums of money to any of the creditors, the sum of $3,010.00, being accrued interest on said Samuel Werbel's first mortgage from the date of the mortgage to the date of the appointment of the said receiver. Said final decree and receiver's report further provided that there was due and owing on petitioner's first mortgage, the sum of $56,000.00, and that said claim was paramount and prior to the claims of any and all creditors of any nature whatsoever in and to the funds in the hands of the receiver.

And your petitioner humbly appeals from such portion of said final decree as aforesaid on the ground that same is erroneous, for that:

(a) The court should have ordered, adjudged and decreed that there was due an additional sum of $658.67, being the amount of insurance premiums advanced by petitioner on said mortgage, said insurance premiums having been added to the principal of said mortgage in accordance with the terms of same, and that said additional sum of $658.67 should have been allowed as a priority of the same dignity and standing as the principal sum of said mortgage, to wit, prior and paramount to any and all claims whatsoever in the hands of the receiver.

(b) Said court should have ordered, adjudged and decreed that petitioner be paid interest on

said sum of $56,000.00, plus the sum of $658.67 from the date of said mortgage until such time as the aforesaid sum of $56,000.00, and said sum of $658.67 should be paid to your petitioner. Said sum of $56,000.00 was repaid to your petitioner by order of the court, on April 12, 1928.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that the record may be remitted to the Court of Chancery with directions to enter a decree that your petitioner be paid the amount due for insurance premiums advanced, to wit, the sum of $658.67, together with interest at the rate of 6% per annum from the date of the mortgage until such time as said sum be paid, prior to the payment of any of the other creditors and claimants in and to the said fund held by the receiver, and that your petitioner be paid interest on the principal sum of his mortgage, to wit, the sum of $56,000.00, from the date of said mortgage, until the time of actual repayment to him of said sum, to wit, April 12, 1928.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

SAUL & JOSEPH E. COHN,
Solicitors of Appellant.

IRWIN R. HELLER,
Of Counsel with Appellant.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between LINCOLN MATERIALS COMPANY, INC., *Complainant,* and GOODWIN CONSTRUCTION COMPANY, *Defendant.*	On Appeal of Samuel Werbel, Appellant, and Walter K. Sherwood, Receiver of Goodwin Construction Company. Answer to Petition of Appeal.

The answer of John R. Blair Company, Inc., to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was on May 23, 1929, and amended by order of June 28, 1929, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree and amendment thereto, is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

Keating & Keating

Solicitors of John R. Blair Company, Inc.

M. Frances Keating,

Of Counsel with

JOHN R. BLAIR COMPANY, INC.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
Defendant.

On Appeal of Samuel Werbel.

Answer to Petition of Appeal.

The answer of David H. Litter, as receiver of Lincoln Materials Company, Inc., the above named appellee, to the petition of appeal of Samuel Werbel, the above named appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that decrees were, on May 23rd, and June 28th, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decrees, this appellee begs leave to refer thereto when the same shall be produced.

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

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel with David H. Litter, as Receiver of Lincoln Materials Company, Inc., Appellee.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between LINCOLN MATERIALS COMPANY, INC., *Complainant,* and GOODWIN CONSTRUCTION COMPANY, *Defendant.*	On Appeal from Samuel Werbel, Appellant, and Walter K. Sherwood, Receiver of Goodwin Construction Company. Answer to Petition of Appeal.

The answer of Levy Brothers Company, one of the mechanic's lien claimants, and one of the creditors of the above named defendant to the petition of the appeal of Samuel Werbel.

This mechanic's lien claimant and creditor of the Goodwin Construction Company, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless admits that an order was on the 23rd day of May, nineteen hundred and twenty-nine, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned, and as therein set forth. But as to the substance and form of said order, this mechanic's lien claimant and creditor of the Goodwin Construction Company, begs leave to refer thereto when the same shall be produced.

This mechanic's lien claimant and creditor of the Goodwin Construction Company is advised and believes that the said order is agreeable to equity; and it prays that the same may be affirmed.

LEVY, FENSTER & MCCLOSKEY,
Solicitors of Levy Brothers Company, one of the Mechanic's Lien Claimants, and Creditors of the Goodwin Construction Company.

SAUL TISCHLER,
Of Counsel.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LINCOLN MATERIALS COMPANY, INC., *Complainant,*

and

GOODWIN CONSTRUCTION COMPANY, *Defendant.*

On Appeal from the Court of Chancery.

The Answer of Walter K. Sherwood, Receiver of Goodwin Construction Company, the above named respondent, to the petition of appeal of Samuel Werbel, appellant.

This respondent not admitting the truth of all or any of the matters in said petition of appeal contained for answer thereto nevertheless admits that a Decree was on the 23rd day of May, 1929, made and entered in the Court of Chancery in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said decree is agreeable to equity and he prays that same may be affirmed with costs to be taxed in favor of this respondent.

JOSEPH STEINER,
Solicitor for and of Counsel
with Defendant-Respondent.

New Jersey Court of Errors and Appeals

Between

LINCOLN MATERIALS COMPANY, INC.,
Complainant,

and

GOODWIN CONSTRUCTION COMPANY,
Defendant.

On Bill, &c.

On Appeal of Samuel Werbel, Appellant, and Walter K. Sherwood, Receiver of Goodwin Construction Company.

Sat Below: CHURCH, V. C.

BRIEF FOR APPELLANT SAMUEL WERBEL.

Statement of Case.

Walter K. Sherwood was appointed receiver for the defendant, Goodwin Construction Company, on March 15, 1926. At the time of his appointment as receiver, he came into possession of an apartment house owned by the defendant corporation, located on Walnut Street, East Orange, N. J., which was partly completed. This building was encumbered by several mortgages and mechanic's liens. The first mortgage was in the nominal sum of $12,000.00, and was held by the Pride of Newark Building and Loan Association. The second mortgage was in the nominal sum of $60,000.00, and was held by Samuel Werbel. A third mortgage in the nominal sum of $15,000.00 was held by the Newark Holding Company. The remaining encumbrances consisted of various lien claims against said building.

On January 18, 1927, an order was entered in this cause directing the sale of said building to John A. McKenna, for the sum of $128,500.00 (Case, p. 3), free and clear of all liens and encumbrances. The order provided that the receiver hold the moneys derived therefrom to abide the further order of the Court. The purchase money derived from this sale was paid by Mr. McKenna to the receiver, as follows: December 6, 1926, $1,000.00; January 22, 1927, $3,000.00; June 27, 1927, $6,000.00; November 16, 1927, $117,836.08 (Receiver's Report and Account, pp. 9, 11). Thereafter, on December 10, 1927, the receiver paid to the Pride of Newark Building and Loan Association, the first mortgagee, the sum of $14,036.92, being the principal and interest to the time of payment to said Building and Loan Association due on its $12,000.00 mortgage on the premises involved (Receiver's Report and Account, p. 16, line 25).

Thereafter, hearings were held by the receiver to determine the priority of the other mortgages and lien claims. On March 24, 1928, the receiver filed his report wherein he allowed the appellant, Samuel Werbel, the sum of $56,000.00, as principal on his mortgage, together with interest at the rate of 6% per annum from the date of said mortgage, to March 15, 1926, the date of the appointment of the receiver, making a total for interest, the sum of $3,010.00, and further reported that said amount of principal and interest was to be first paid out of the proceeds in the hands of said receiver, to Samuel Werbel, prior to all other mortgages and lien claims (the mortgage of the Pride of Newark Building and Loan Association having been paid off in full with interest). The receiver also reported that Samuel Werbel had advanced under his mortgage, insurance premiums amounting to $658.67, which sum Mr. Werbel was entitled to

have paid to him among the general creditors of the estate.

An appeal was taken by Samuel Werbel from said receiver's determination, alleging that said Samuel Werbel was entitled to interest on the principal sum of $56,000.00 from the date of said mortgage up to the time said sum was actually repaid to said Samuel Werbel, and alleging further that the said Samuel Werbel was entitled to have added to the principal sum of his mortgage, the sum of $658.67, being the amount of insurance premiums advanced by said Samuel Werbel in accordance with the provisions of his bond and mortgage. The sum of $56,000.00, representing the principal only of Samuel Werbel's mortgage, was repaid to him by an order of court on April 12, 1929. There was no dispute by any of the parties to this litigation as to this amount, and the Vice-Chancellor accordingly ordered the receiver to pay the said sum, pending the litigation as to the amount of interest due and the insurance premiums advanced.

On May 23, 1929, an order was entered in this cause that all exceptions and appeals filed, be dismissed and that the receiver's report be sustained and confirmed in all respects. This order was amended by an order dated June 28, 1929, to correct an error of the omission of the mention of the payment to Samuel Werbel of the accrued interest allowed by said receiver in his report. Appellant, Samuel Werbel, appeals from said order of May 23, 1929, as amended by the order of June 28, 1929, on the grounds set forth in appellant's petition of appeal and hereinafter elaborated upon.

ARGUMENT.

POINT I.

Appellant, Samuel Werbel, is entitled to interest on the sum of $56,000, from the date of his mortgage up to the date of repayment to him of said sum, to wit, April 10, 1929.

The only authority under which the Court could have ordered a sale free and clear of all liens and encumbrances as was done in this case, is Section 81 of the Corporation Act (*2 Compiled Statutes*, p. 1649, Sec. 81). (*Reilly* v. *Penn Cordage Co.*, 58 N. J. E. 459.)

It therefore follows that the purchase price of said property paid into Court or to the receiver as in this case, remained subject to the same liens and equities of all parties in interest as was the property before the sale as is provided in said act (Sec. 81, *supra*). So that Samuel Werbel has a claim against said fund in the possession of the receiver of his high dignity as if the real estate were still in the hands of the receiver.

The Goodwin Construction Company, the insolvent corporation, on April 22, 1925, executed a bond to Samuel Werbel, in the principal sum of $60,000.00, and simultaneously therewith executed and delivered to Samuel Werbel, a mortgage to secure the payment of said bond, which mortgage was duly acknowledged and recorded in the Essex County Register's office, thereby becoming a lien on the specific property covered therein, which was the property sold by the receiver appointed for the Goodwin Construction Company. Both said bond and mortgage provided among other things, that the mortgagee should receive interest

thereon at the rate of six (6) per centum per annum from the date of said mortgage. So that it is at once apparent that it was within the anticipation of the parties to the contract of mortgage, that interest should be paid from its date until such time as the money secured by the mortgage was returned to the mortgagee. This situation presents a different case than that of the ordinary claim against an insolvent estate. Here, the contract itself between the parties provided for the payment of interest. In the usual case of a claim against an insolvent estate, such as a note or a lien claim, interest can be chargeable only as damages for the detention of the debt. The interest provided for in said mortgage is not of such a character.

There is very little law in this state on the subject of payment of interest by receivers. The case of *Hoover Steel Ball Co.* v. *Shaefer Ball Bearing Co.*, decided by Vice-Chancellor LANE and reported in 107 Atl. 425, is the nearest case that can be found in this state on the subject. In that case, Vice-Chancellor LANE in reviewing the subject, says:

> "It has been held that where a creditor has a lien upon specific property by contract, he is entitled to receive from this specific property, the amount due him with interest, if provided for by the contract. * * *" 34 Cyc., title "Receivers, p. 372, #4; Brazelton *v.* Campbell, 49 Tex. Civ. App. 218, 108 S. W. 770, 773."

In the cited case, Vice-Chancellor LANE decided that the mortgagees be allowed interest on their decree to the date of the payment of the purchase price of the property to the receiver, and that thereafter they are entitled only to such interest as may have been earned upon that portion of the fund to which they were equitably entitled. In that case, it was held that the mortgagees by their de-

cree, had a lien upon specific property, but they were entitled to interest not by virtue of the contract, but by way of damages for the detention of the debt. That case, however, is distinguishable from the one at bar in that the mortgagees had a final decree in the foreclosure of said mortgage. A final decree of course, adjudges the amount due on the mortgage, including the principal and interest until that date. Thereafter, interest is payable on the whole amount of the decree not by virtue of the contract between the parties, but as damages for the detention of the debt. In the case at bar, no final decree was rendered on appellant's mortgage, so that the reasoning of Vice-Chancellor LANE classifying the payment of interest on the mortgages in the cited case as damages for the detention of the debt, cannot be applied to the case at bar. In our case, we have a specific agreement providing for the payment of interest. At this juncture, it should be pointed out that the mortgage of the Pride of Newark Building and Loan Association in the sum of $12,000.00, was paid off by the receiver in full, including interest to the date of payment, prior to the filing of the receiver's report. Appellant contends that his claim for interest should be given the same consideration and fair dealing as that of the Pride of Newark Building and Loan Association.

Samuel Werbel's mortgage is a claim on the funds in the hands of the receiver prior to any of the other mortgagees and lien claims. He is in a class by himself, there being no other liens of equal dignity in this estate. This situation leads us to an analysis of a United States Supreme Court decision by Mr. Justice LAMAR in the case of *American Iron & Steel Manufacturing Co.* v. *Seaboard Air Line Railway,* 233 U. S. 261; 34 Sup. Ct. 502, 58 L. Ed. 949. In that case, the Justice said:

"In the discussion as to the answer which should be given that question (interest question), the Railway Company insists that, whether treated as part of the debt or allowed as damages, interest can only be charged against the railway because of delay due to its own fault, while here the failure to pay was due to the act of the law in taking its property into custody and operating the same by receivers in order to prevent the disruption of a great public utility. And it is true, as held in Tredeger Co. *v.* Seaboard Ry., 183 Fed. 290 (105 C. C. A. 501), that as a general rule, after property of an insolvent is in *custodia legis,* interest thereafter accruing is not allowed on debts payable out of the fund realized by a sale of the property. But that is not because the claims had lost their interest-bearing quality during that period, but is a necessary and enforced rule of distribution, due to the fact that in case of receiverships the assets are generally insufficient to pay debts in full. If all claims were of equal dignity and all bore the same rate of interest, from the date of the receivership to the date of final distribution, it would be immaterial whether the dividend was calculated on the basis of the principal alone or of principal and interest combined. But some of the debts might carry a high rate and some a low rate, and hence inequality would result in the payment of interest which accrued during the delay incident to collecting and distributing the funds. As this delay was the act of the law, no one should thereby gain an advantage or suffer a loss. *For that and like reasons, in case funds are not sufficient to pay claims of equal dignity, the distribution is made only on the basis of the principal of the debt.* But the rule did not prevent the running of interest during the receivership; and if, as a result of good fortune or good management, the estate proved sufficient to discharge the claims in full interest as well as principal should be paid. Even in bankruptcy and in the face of the argument

> that the debtor's liability on the debt and its incidents terminated at the date of adjudication, and as a fixed liability was transferred to the fund, it has been held, in the rare instances where the assets ultimately proved sufficient for the purpose, that creditors were entitled to interest accruing after adjudication. 2 Blackstone's Comm. 488; cf. Johnson *v.* Norris, 190 Fed. 460 (5) (11 C. C. A. 291).
>
> "The principle is not limited to cases of technical bankruptcy, where the assets ultimately prove sufficient to pay all debts in full, *but principal as well as interest, accruing during a receivership, is paid on debts of the highest dignity, even though what remains is not sufficient to pay claims of a lower rank in full.* Central Co. *v.* Condon, 67 Fed. 84 (14 C. C. A. 314); Richmond, etc., Co. *v.* Richmond R. Co., 68 Fed. 116 (15 C. C. A. 289, 34 L. R. A. 625); First National Bank *v.* Ewing, 103 Fed. 190 (43 C. C. A. 150)."

So that it will readily be seen that interest is disallowed in receivership cases only where there are several in a class. This opinion clearly brings out that principal as well as interest accruing during receivership is paid on debts of the highest dignity even though what remains is not sufficient to pay claims of a lower rank in full. This opinion further brings out the point that the only time the question of interest arises is where there are several claimants of equal dignity and that where there is sufficient to pay all the claims of a class of equal dignity, interest will be allowed. In the case at bar, Samuel Werbel stands alone, in a class by himself, for his lien is of the highest dignity. No other claimant stands on a par with him, so that the question of interest on his claim should not arise if the decision of Justice LAMAR should be given any effect. In the case of *Pennsylvania Steel Co., et al.* v. *New York City Railway Co., et al.*, 216 Federal Reporter, 458, 471, 472, the Circuit Court of Appeals, Second Circuit, construed Jus-

tice LAMAR'S decision in the very same light as herein contended. In the last cited case, the Court stated: "In this case, however, the supply creditors are preferred and the fund is sufficient to pay them in full with interest and leave a balance over for general creditors," and therefore held that interest should be allowed on the preferred claims, they being all of one class and there being sufficient assets to satisfy all claims of said preferred class of creditors.

In the case of *Spring Coal Co.* v. *Keech, et al.*, 239 Fed. Reporter, page 48, the Circuit Court of Appeals, for the Fourth Circuit, held that under the general principles of equity in the administration of the estate of an insolvent corporation through a receivership, where there are claims of different rank, the holders are entitled to interest until the time of payment, even though the holders of claims of inferior rank may receive no dividends at all. In this decision, the Court very nicely reviews the United States Court decisions relative to the claim of interest in insolvency proceedings, and interprets the decision of Mr. Justice LAMAR in the case of *American Iron Co.* v. *Seaboard Air Line Railway* (*supra*), in accordance with the views herein expressed.

The only other New Jersey decision the writer has found on this question, is the case of *Meister* v. *J. Meister, Inc.*, 142 Atl. 312, decided by Vice-Chancellor BERRY, wherein it was held that interest should be allowed up to the date of the receiver's sale. In that case, the receiver had reported that the mortgagee was entitled to interest only to the time of his appointment, and exceptions to the receiver's report were accordingly sustained. So that it appears from this analysis, that the New Jersey cases have gone as far as allowing interest to the time when the receiver receives the money into his hands.

In the case at bar, applying the principles of the New Jersey cases as far as they have gone, Samuel Werbel should be allowed interest on the sum of $56,000.00 from the date of his mortgage, April 22, 1925, to November 16, 1927, when the receiver received from John A. McKenna the bulk of the purchase price (Receiver's Report and Account, p. 11, line 30). But an analysis of the Federal decisions on this question should convince this Court that interest in such cases as the one at bar should be allowed on the secured claim, which is in a class by itself up to the date of actual repayment of the principal. This construction is only fair and equitable, for under our Corporation Act, where property is sold free and clear of all encumbrances, lien holders look to the act for their protection, which provides that the funds shall be subject to the same liens and equities as the property itself. To limit the payment of interest to the date of the receiver's sale, or the time when the funds are paid into court, seems to belittle the dignity of a mortgage encumbrance. The refusal to adopt the liberal Federal view on this question of interest may seriously affect the business of lending money, which is very essential in the development of a community.

POINT II.

Appellant, Samuel Werbel, is entitled to have added to the amount of the principal sum of his mortgage, the amount advanced by him for insurance premiums.

In the mortgage hereinabove referred to, defendant agreed as follows:

> "*And it is agreed that if the mortgagor,* its successors and assigns, shall neglect to pay all

> or any tax, assessment or other municipal or governmental rate, charge, imposition or any installment or installments of monthly Building Loan dues and interest, or any sums payable under any lien superior hereto, *or any premium for insurance,* as aforesaid, on any day whereon the same shall become due and payable, after the period of default aforesaid, *then it shall be lawful for the mortgagee,* his heirs, executors, administrators and assigns, *to pay such charges, and the sum or sums so paid shall be a lien on the said mortgaged premises added to the amount secured hereby, with interest at six per cent. per annum,* and, in the event of such payment, at the option of the mortgagee, his heirs, executors, administrators or assigns, the principal sum secured hereunder shall become due and payable."

As will be seen by the agreement contained in the mortgage, the mortgagee had the right to pay any premiums for insurance covering the premises described in the mortgage, to add such payment to the amount secured by the mortgage, and consider such sum as part of the principal thereof and a lien on said premises, to be repaid to the mortgagee, together with the principal sum of the mortgage, together with interest at 6% per annum. The receiver, in his report, stated that Mr. Werbel, the mortgagee, had paid the sum of $658.67 as insurance premiums, but reported that the mortgagee was entitled to be repaid the moneys advanced for insurance premiums as a general creditor only, whereas the receiver should have reported that the moneys paid by the mortgagee became part of the principal of the mortgage, and should be added thereto, which whole sum should bear interest at the rate of 6% per annum. This sum of $658.67 is entitled to the same dignity as a lien as the net principal of the mortgage. This point was raised in the case of *Meister* v. *J. Meister, Inc.* (*supra*), wherein Vice-Chancellor BERRY said:

"The Franklin Mortgage and Title Guaranty Company excepts to the receiver's account so far as this fund is concerned because the sum of $87.75 due that company for fire insurance premiums was not allowed and because interest was computed on its mortgage only up to the date of the receiver's appointment. Both these exceptions will be allowed. The first was the result of an oversight and interest should be allowed on the mortgage up to the date of the receiver's sale, which was June 25, 1926."

CONCLUSION.

It is respectfully submitted that the Court below erred in sustaining the receiver's report and ordering distribution in accordance with the terms of that report and it is submitted that the order of May 23, 1929, as amended by the order of June 28, 1929, should be reversed with directions to the Court below to enter an order adjudging that appellant Samuel Werbel be paid the amount due for insurance premiums advanced, to wit, the sum of $658.67, together with interest at the rate of 6% per annum from the date of the mortgage until such time as said sum be paid, prior to the payment of any of the other creditors and claimants in and to the said fund held by receiver, and that your petitioner be paid interest on the principal sum of his mortgage, to wit, the sum of $56,000.00, from the date of said mortgage until the time of actual repayment to him of that sum, to wit, April 12, 1928, prior to the payment of any of the other creditors and claimants in and to the said fund held by receiver.

SAUL AND JOSEPH E. COHN,
Solicitors of Appellant Samuel Werbel.

IRWIN R. HELLER,
Of Counsel with Appellant Samuel Werbel.

New Jersey Court of Errors and Appeals

Between LINCOLN MATERIAL COMPANY, INC., Complainant, and GOODWIN CONSTRUCTION COMPANY, Defendant.	On Bill,&c. On Appeal of Samuel Werbel, Appellant, and Walter K. Sherwood, Receiver of Goodwin Construction Company. Sat below: CHURCH, *V. C*

BRIEF FOR THE RESPONDENT WALTER K. SHERWOOD, RECEIVER OF GOODWIN CONSTRUCTION COMPANY.

Statement of Case.

Walter K. Sherwood was appointed Receiver for the Goodwin Construction Company on March 15th, 1926. The general basic facts are the same as arise in case No. 51 on the calendar of this Court at the present term. The Receiver in his Report allowed accrued interest on the amount of the principal shown to have been actually advanced from the date of the making of the mortgage up to the date of the appointment of the Receiver. The mortgagee appellant contends that he is entitled not only to the interest thus allowed but also in addition to interest from the date of the appointment of the Receiver until the date of the repayment of the amount of the mortgage found good ($56,000.00) which latter amount was paid to the appellant by order of the Court of Chancery on April 12th, 1928 (pp. 29 and 30).

POINT I.

The Receiver was justified in allowing the Appellant, Samuel Werbel, interest on $56,000.00 from the date of the mortgage up to the date of the receivership only.

The question of interest and its allowance in a case of Chancery insolvency does not seem to be controlled by a hard and fast rule in this State, and as was pointed out in the case cited by appellant, that is to say,

> Hoover Steel Ball Co. vs. Schaefer Ball Bearing Co., 90 N. J. Eq. 515.

The rule is that where a creditor has a lien upon specific property by contract he is entitled to receive from the specific property the amount due him with interest, if provided for by the contract, is subject to its exceptions and the solution of the question may depend upon the nature of the events which prevented payment. As was cited by Vice Chancellor Lane (at p. 517) referring to an opinion of Vice Chancellar Stevenson in Agnew vs. Board of Education, 83 N. J. Eq. 49, affirmed by the Court of Errors and Appeals on the Vice-Chancellor's opinion (83 N. J. Eq. 336):

> "It should be borne in mind that the whole tendency of courts of law and courts of equity for a considerable period of time, has been to break away from hard and fast rules and charge and allow interest in accordance with principles of equity, in order to accomplish justice in each particular case."

In the case at bar the receiver experienced considerable difficulty in determining just how much of appellant's mortgage was legal. As the State of Case in Case No. 51 is now before the Court and is part of the permanent records of the same, the Court may take judicial notice of the same and on pp. 58 and 59 we find the following under the testimony of Charles Cohen:

"Q. How much did you pay Werbel for this mortgage?

A. 6½%.

Q. When did you pay him?

A. From the first payment.

Q. There are two checks each in the sum of $4,000.00, one drawn on the Weequahic Trust Company, and the other on the Clinton Trust Company, can you tell which one you gave him?

A. It was one of them but I do not remember which one.

Q. Did you go to the bank and have the check cashed and then turn the cash over to him?

A. Yes.

Q. Well, what was that for?

A. Well, everybody pays bonuses, this was a business affair, not a love affair.

Q. So that you paid Werbel 6½% of the $60,000.00 for loaning that money?

A. Yes.

Q. Who represented Mr. Werbel?

A. I met Mr. Werbel and I asked him for a mortgage and he said it would be 6½%. I gave him the facts and he had the mortgage drawn up by Cohen & Cohen's office.

Q. How much was the counsel fee?

A. Everything was included in the 6½%.

Q. There is no mistake in your mind that you paid 6½% in cash?

A. No, in fact all of the $4,000.00 went for that, I think it was $3,900.00 and the rest was for insurance.

Q. And you turned over the $4,000.00 to him?
A. Yes.
Q. No mistake about that?
A. No."

It will thus be seen from the outset this entire mortgage transaction Werbel and the Goodwin Construction Company was not of such a kind as would lead anybody examining into it, and especially the reciver, to come to the conclusion that it was an open and shut transaction and fair and unimpeachable, secured by a Bond accompanied by a mortgage on real estate of the kind to characterize it as being beyond suspicion. It is also stated that interest may be affected where the property which secures the mortgage is taken into *custodia legis,* and as was stated in the opinion first above quoted at p. 517, "In each case the question is what is fair in right and justice", citing cases.

There should be no hard, fast and definite rule in this or any other case where interest is involved. Many contingencies must be borne in mind when money is loaned on Bond and Mortgage and its repayment secured by the acknowledgment of a mortgage indebtedness including the 6% lawful rate. There must be taken into consideration not only compensation to the lender for the mere use of his money but also compensation to the lender for the arising of the contingency which happened in this case, that is to say, failure of the mortgagor to repay his mortgage debt when due, occasioned not only by the mere insolvency of the mortgagor, but the fact that the subject matter of the mortgage is taken into *custodia legis* and administered equitably through our Chancery Court.

Nor is the case in the United States Supreme

Court cited by the appellant authority for the proposition for which it is used.

> American Iron & Steel Manufacturing Co. vs. Seaboard Air Line Railway, 233 U. S. 261; 59 L. Ed. 949,

was a case which arose under a Virginia Statute where there had been a sale of supplies on thirty days credit, and the question was whether after insolvency an implied promise by the purchaser to pay interest on the maturity of the debt would be raised, even though on the date of the maturity of the debt the debtor company was in the hands of a receiver. The Court at the outset finds that the sale was made to the Railway Company in Virginia on thirty days credit, which, under the local law, had priority over bonded indebtedness and for that reason ordered payment of the full amount of the claim and interest to the prejudice, if any, of the mortgage debt. I say "if any" because it would seem that in this case there were funds sufficiently ample to pay both that particular creditor's claim as well as the Bond and Mortgage indebtedness. The lengthy quotation contained in appellant's brief (p. 78) is dictum and obiter and not necessary to the decision of the case inasmuch as the case was ultimately decided on the Virginia Statute which controlled in the lower Court and was binding in a case of this kind on the United States Supreme Court.

POINT II.

The Appellant is not entitled to have his insurance premium refunded to him as a mortgage advance.

In this case as appears from the date of filing, the State of Case was not served on time. The receiver, however, took the position that no motion should be made to dismiss as the rights of several parties were involved, not only in this case but also in the other case on the calendar of the Court at this time (No. 51). The receiver, after all, was charged with the duty of administering the assets of an insolvent estate to the best of his knowledge and understanding with due regard to the rights of all parties and felt that he should not preclude the appellant's right to be heard altogether by a motion to dismiss.

Nor is the mortgage in question from which quotations are taken at length in appellant's brief printed as part of the State of the Case. The receiver's action in disallowing the insurance premium alleged to have been advanced as a part of the mortgage indebtedness but allowing it only as a general creditor's claim is based upon the provisions of the Mechanic's Lien Law, and the nature of the Werbel mortgage. The Werbel mortgage was a construction mortgage, that is, funds were advanced from time to time from the mortgagee to the mortgagor to be used by the mortgagor in erecting and constructing its building to the extent that the mortgagee (Werbel) was able to show that the moneys advanced by him went into the building, the receiver found the mortgage good. Any excess, however, that is to say, any sums ad-

vanced for any purpose which it could not be shown went into the buildings, the receiver does not find is entitled to priority over claims arising under the Mechanic's Lien Law. (New Jersey Mechanic's Lien Law, Section 16.)

Conclusions.

For the reasons above stated it is respectfully submitted that there was no error in the Court below in sustaining the Receiver's Report in its entirety and that the said Report and the Order based thereon should in all respects be affirmed.

Respectfully submitted,

JOSEPH STEINER,
Solicitor for and of Counsel with Respondent, Walter K. Sherwood, Receiver of Goodwin Construction Company.

New Jersey Court of Errors and Appeals

Between LINCOLN MATERIAL COMPANY, INC., Complainant, and GOODWIN CONSTRUCTION COMPANY, Defendant.	On Bill. On Appeal of Mortgagee from Determination of Receiver as to Priorities.
On Appeal of SAMUEL WERBEL, mortgagee, Appellant, and WALTER K. SHERWOOD, Receiver of Goodwin Construction Company et als, lien claimants, Respondents.	Appeal from Order Dismissing Appeal of Mortgagees. Sat below CHURCH, *V. C.* #121

BRIEF FOR RESPONDENT

LEVY BROTHERS COMPANY, INC.

one of the mechanic's lien claimants, creditor of the Goodwin Construction Company.

(Italics, etc., ours except where otherwise noted).

(All references to pages are the State of Case, except where otherwise noted).

Statement of the Case.

Walter K. Sherwood was appointed statutory receiver of Goodwin Construction Company on

March 30, 1926, against which company a statutory injunction issued under the Corporation Act upon the ground of insolvency. The corporation is being wound up in the Court of Chancery as an insolvent corporation.

One of the assets of the Goodwin Construction Company was an unfinished twenty-four family apartment house designated as #14 North Walnut Street, East Orange, New Jersey.

Said premises were encumbered by several mortgages among which was one held by the appellant in the sum of $60,000.00; a third mortgage in the nominal sum of $15,000.00 was held by the Newark Holding Company, and the said mortgage is in question in another appeal before this Court, the appeal of the Newark Holding Company, Appeal No. 51, of the causes for the October term. At the time of the appointment of the Receiver numerous mechanics liens were filed against the said #14 North Walnut Street, East Orange, New Jersey, amongst them being a mechanics lien filed by this respondent, Levy Brothers Company, Inc., whose claim was duly allowed by the Receiver in the sum of $4,049.00, and this claim was not attacked by any creditor at any time.

On or about the 18th day of January 1927, an order for sale was made confirming a contract of sale made by Walter K. Sherwood, the receiver of Goodwin Construction Company with one John A. McKenna, which order of sale presumably ordered the property sold, free and clear of all liens, including the lien of the appellant and this respondent.

Numerous hearings were had to determine the validity and the amount due to the appellant, Samuel Werbel. The testimony as to the validity of appellant's mortgage appears in the State of Case

of the Newark Holding Company, pages 46 and 60.

It appears from the receiver's memorandum, which appears on page 109 of the State of Case of the Newark Holding Company, as follows:

> "I find that Samuel Werbel was the holder of a mortgage of $60,000.00 on the property and that but $56,000.00 of the same was actually advanced to the defendant Goodwin Construction Company and actually went into the building. I find from the testimony taken before me that a fee of $4,000.00 was charged for the use of this money. Werbel denies that it was a fee but the Cohens (officers of the defendant company) insist that it was a bonus charge and I find this to be a fact. While it is true that the defense of usury is not available to a corporation still, when priorities are considered as between mortgagees and mechanic lienors, it being impossible to say that the $4,000.00 went into the building which it is necessary to find in order that the mortgage preserves its priority, I find that the $4,000.00 can only be treated as a general claim and for that reason I find that the $4,000.00 in question should be treated as a general claim and not as an advance under the mortgage."

The receiver collected from John A. McKenna, on December 6, 1926, $1,000.00; on January 2, 1927, $3,000.00, and on June 27, 1927, $6,000.00; and on November 16, 1927 the receiver received the balance of the purchase price of $117,836.08. The receiver's report was filed on March 24, 1928. (see State of Case, Newark Holding Company, page 102).

The receiver allowed Samuel Werbel interest on his mortgage until the date of the appointment of the receiver, but did not allow him the sum of $658.60, the amount of insurance premiums ad-

vanced, as a priority claim. Samuel Werbel appealed to the Court of Chancery and his appeal was dismissed and it is from the receiver's findings and dismissal of the appeal by the Vice-Chancellor that the appellant Samuel Werbel appeals.

Thus, there are but two questions involved:

1. Is the mortgagee entitled to interest to the date of the payment of the mortgage?

2. Is a claim for insurance premiums entitled to priority over a mechanics lien?

ARGUMENT.

The Decision of the Receiver.

By virtue of Sec. 76 of the General Corporation Act of New Jersey, 2 C. S. 1648, the receiver has the power to pass upon and allow or disallow the claims of any person in connection with the insolvent corporation, Smith vs. Trenton Delaware Falls Company, 4 Equity 405.

The Facts.

It appears from the testimony (page 47 of the State of Case of Newark Holding Company), that Samuel Werbel claimed that he advanced $60,000.00, and on page 41 Samuel Werbel testified that he did not receive anything on account of principal, and denied (page 54) that he received any bonus for granting the loan.

However, Charles Cohen, president of the Goodwin Construction Company (page 59 of the State of Case of Newark Holding Company Appeal), testified that he paid $4,000.00 to Samuel Werbel.

The receiver found (in his memorandum page 109) that Samuel Werbel did receive the sum of $4,000.00 as a bonus and only allowed his claim as a priority claim in the sum of $56,000.00. No appeal was taken either to the Court of Chancery or to this Court on the question of the disallowance of the sum of $4,000.00 as a priority claim, and it must be assumed that the receiver's finding as to the acceptance of a bonus by Samuel Werbel of $4,000.00 was correct.

I.

The appellant's claim for insurance premiums should not be a prior claim to the mechanics lien claims of the lien claimants.

By virtue of Sec. 28 of the Mechanics Lien Law, 3 C. S. 3310, Luce Mechanics Lien Law, Ed. 1923, page 254, a writ of fieri facias under a mechanics lien sells the property covered by mechanics lien subject only to such mortgages as were on the land at the time of the commencement of the erection of the building, subject only to the lien of the mortgage given under the provisions of Section 14 or 15 of the Mechanics Lien Act.

The mortgage given to the appellant Samuel Werbel was a construction mortgage and comes within the provisions of Sec. 15 of the Mechanics Lien Act, 3 C. S. 3303, Luce Mechanics Lien Law, Ed. 1923, page 207.

By virtue of Sec. 15 of the Mechanics Lien Law, the mortgage given by the Goodwin Construction Company to Samuel Werbel is only entitled to priority to the extent that monies were actually advanced and used in the erection of the building.

> "The test is, whether the mortgage money has been loaned for and actually applied to the erection of the building. Citing Young vs. Haight, 69 N. J. L. 453".
>
> Porch vs. Agnew Company, 70 N. J. E. 328-342 affirmed in 17 N. J. E. 305.

In the case of Pinsky & Son vs. Wike, 101 N. J. E. 45, it was held that one who supplied insurance was not a person who furnished material or a laborer within the terms of the Mechanics Lien Law, and therefore payment to one who supplied insurance is not a payment to a person who performed labor or supplied materials in the erection of the building.

II.

The appellant is only entitled to interest until the date of the appointment of the receiver.

As stated in the case of Agnew Company vs. Board of Education, 83 N. J. E. 49, affirmed in 83 N. J. E. page 336, the Court stated:

> "The questions relating to the charge and allowance of interest in this case are difficult. It is well said in 16 Am. & Eng. Encyl. L. 922, that 'there is no subject in law with reference to which there is a greater conflict and confusion in the cases than that of interest."

Unless a case be found which is a conclusive authority and established a precedent, the safest way for a Court of law or equity, is to decide all questions pertaining to interest according to the plainest and simplest considerations of justice and fair dealings.

We do not think that there is any case in the Court of Errors and Appeals which controls any of the points relating to interest to be adjudicated in this case.

In the case of Hoover Steel Ball Company vs. Shafer Ball Bearing Company, 90 N. J. E. 515, the question that is before this Court came up. In that case, property was sold free and clear of a mortgage which had gone to final decree, and Vice-Chancellor Lane held in that case that the mortgagee was entitled to interest to the date of the payment of the purchase price to the receiver.

In the Hoover Steel case, there was no delay caused by reason of the fact that the receiver was attempting to determine the validity and extent of the lien. Vice-Chancellor Lane stated:

> "I do not find that any subsequent delay in disposing of the property was occasioned by the fact that the receiver raised the contention that certain of the property ought to be sold under the fieri facias, was not subject to the operation thereof. If such a delay had occurred, I might have found that the mortgagees 'were entitled to interest only to date of the appointment of the receiver', or to the date of his application to this Court to stay the sale under the writ of Fieri Facias."

In the instant case, considerable delay was occasioned by the fact that the appellant Samuel Werbel claimed a priority of $4,000.00 more than he was entitled to and any delay in the distribution of the sum was due to the appellant's own fault in claiming more than he was legally entitled to. The delay in distributing this fund, brings this case out of the rule established by the Court of Chancery in the Hoover Steel Ball Company vs.

Shaefer Ball Bearing Company case, and it is for this reason alone that this Honorable Court should refuse to set aside the ruling of the Court of Chancery. Again, the money was deposited with the receiver finally, on November 16, 1927, and the appellant at no time made any effort to obtain an order from the Court of Chancery to pay the amount due him on his mortgage. Are these mechanics liens to suffer because of the fact that the appellant Samuel Werbel "sat on his rights".

The test suggested by Vice-Chancellor Lane should be one adopted by this Court. In each case, the question is, "what is fair in right and justice".

III.

Cases from other jurisdiction.

The appellant cites as authority for the fact that he is entitled to interest to the time of re-payment, the case of American Iron and Steel Manufacturing Company vs. Seaboard Air Line Railway, 233 U. S. 261. The statement quoted by the appellant is dicta. It appears in the American Iron case that the defendant was in the hands of a Receiver on application of the corporation itself, concurred in by the trustees under a mortgage on the property of the Railroad that subseqently the property was all re-transferred to the Railroad Company. Interest was paid on all floating obligations and the road was operated profitably by the receiver. And the Court in the case said, "for manifestly the law does not contemplate that either the debtor or the trustees can, by securing the appointment of a receiver, stop the running of interest on claims of the highest dignity". Interest was allowed in

the Seaboard case under the particular facts certified by the Court of Appeals.

In the case of Pennsylvania Steel Company vs. New York City Railway Company, 216 Fed. 458, interest was allowed by reason of the particular equity involved in the case. The property was operated by the receiver and the mortgagee had the benefit of the income and there was a contest in that case betwen preferred creditors and general creditors and the priority allowed was given the preference on the ground of public policy.

In Spring Coal Co. vs. Keech, 239 Fed. 48, the property also was operated by the receiver and made a large profit, and the Court in that case held that it would be unequitable to deprive lien claimants of interest for more than four years, while the mine was operated for the benefit of non-lien creditors.

It is respectfully urged that the reasons for the granting of interest in the Pennsylvania Steel Company case and in the Spring Coal Co. case, and the American Iron case are not applicable to the situation now at hand.

In the present case, where dealing with an apartment house which apartment house was not operated profitably for the benefit of non-lien creditors, the mortgagee creditor was not unnecessarily delayed in receiving the principal sum by an act of law. Any delay was caused by reason of his own neglect and by reason of his own avariciousness in attempting to receive more than was his due. The mechanics lien claimants material and labor were just as instrumental in the erection of the apartment house which was the main asset of the Goodwin Construction Company, as that of the mortgagee who loaned funds to the builder.

However, the position of the receiver is amply

supported in the decision in the United States Courts and in decisions of other jurisdictions. In the case of Thomas vs. Western Car Company, 149 U. S. 95, 37 Lawyers, Ed. 663, interest was refused to the claimant on the ground that no interest would be allowed against creditors of the corporation while the property was in custodia legis.

In England, when a corporation is wound up, interest is only allowed on claims up to the date of the winding up order, which is equivalent to our order appointing receiver.

> "In case of the insolvent company, creditors whose debts carry interest are entitled to dividends only on what is due for principal and interest when winding up commences. 5 Hals. Laws of England page 1511".
>
> Also see 10 English & Empire Digest, page 933 and 1049.
>
> Also see the cases in re, Humber Iron Works vs. Ship Building Company, Warren Finance Company case 4 Ch. Appeals 643, 1869.
>
> In re Contract Corporation, Ebbw Vale Company case, 5 Ch. Appeals 113.
>
> Imperial Land Company vs. Marseilles, Ex parte Colborne & Strawbridge, L. R. 11 E. 478-497.
>
> International Contract Company—Hughes claim L. R. 13 E. 623 (1872)

In the latter case, the Court stated that the reason for the nullification of the interest contract was that every delay in paying debts after the winding up order is to be considered as a delay occasioned by the Court.

The rule of the English Bankruptcy Courts and the American Bankruptcy Courts are alike, that is,

no interest will be allowed subsequent to the date of the filing of the petition in bankruptcy. See Sexton vs. Dreyfuss, 219 U. S. 339, 344.

> "for more than a century and a half the theory of the English Bankrupt System has been that everything stops at a certain date. Interest was not computed beyond date of commission. Ex parte Bennet, 2 Atl. 527. This rule was applied to mortgages as well as to unsecured debts. Ex parte Wardell 1787, Ex parte Hercy 1792, 1 Cooke's Bankrupt Laws—4th Ed. 181 (1st Ed. Appendix) and notwithstanding occasional doubts it has been so applied with the prevailing assent of English Judges ever since."
>
> See also 4 Empire English Digest 305, 306 7 C. J. 309, par. 507.

In the case of Lerner Stores Corporation vs. Electrical Maid Bake Shops, in re Baking Company, Inc., 24 Fed. (2nd) page 780, the facts were almost similar to the present case. Property was sold free of a chattel mortgage which was held to be prior to the landlords lien. The Court held, "it is material, however, to consider what the rights of a mortgage creditor are. He is entitled to collect his rent in full *with interest to filing of petition, but interest does not run beyond that date.*"

Where a National Bank is being wound up on the ground of insolvency, interest is only allowed on claims until the date of insolvency. White vs. Knox, 111 U. S. 784.

In New York, interest is only allowed to the date of the filing of the bill. The leading case is the case of People vs. American Loan and Trust Company, 172 N. Y. 371, 65 Northeastern 200, and we take the liberty of quoting considerable from

said case, as we believe that the reasoning in the case is very logical.

> "As questions relating to interest are liable to arise so frequently in the settlement of the affairs of insolvent corporations, we adopt the broad, simple and just rule laid down in substance by the Appellate Division, that while interest is allowed as against the corporation itself, or its stockholders, if the assets are sufficient for the purpose, as between preferred and unpreferred creditors, no interest is allowed after the law takes charge through appointment of a receiver. A corporation is created by edict of the legislature and dies at its command.
>
> Knowledge is imputed to all who deal with it, that when it suspends business, the law takes charge of its affairs, liquidates its debts, converts its assets, and distributes the proceeds among its creditors.
>
> Those who contract with it, do so 'with knowledge of the stautory conditions, and these must be deemed to have permeated the agreement and constituted elements of the obligation'; People vs. Globe Mut. Life Ins. Co., 91 N. Y. 174, 179. People vs. Security Life Ins. & Annuity Co., 78 N. Y. 115, 34 Am. Rep. 552.
>
> The process of administration provided by law is through a receiver, as the executive arm of the Court. He is appointed for the benefit of all the creditors, both preferred and unpreferred, and holds the assets, under the direction of the court, in trust primarily for them, and finally for corporation or its stockholders.
>
> Thereupon, by operation of law, the creditors became the equitable owner of the assets and the administration of affairs is for their benefit as such. The claims of creditors against the defunct corporation, differ from the claims against its assets in sequestration,

for they are not proved against the insolvent and dissolved non-equity, but against the fund in the receiver's hands. In the distribution of that fund the general rule is that equality is equity, should prevail so far as the statute, when reasonably construed will permit." * * *

* * * * *

"If fund in the hands of the Court would have been distributed on the same day that the receiver was appointed, no claim of interest could have arisen for there would have been no delay and no suspension of legal remedies. The delay in distribution, however, was the act of the law itself, and was essential for various purposes and among others to enable the creditors to prove their claims." "As a general rule, after property of an insolvent passes into the hands of a receiver or assignee, in insolvency, interest is not allowed on the claims against the funds." Thomas vs. Car Co., 149 U. S. 116; 13 Sup. Ct. 824, 37 L. Ed. 663. Interest should not run in favor of one creditor at the expense of another, while the law, acting for all, is administering the assets." * * *

As betwen the creditors themselves, therefore, interest ceases to accrue upon their respective claims, whether preferred or unpreferred from the day when the corporation let go and Court took hold. * * *

In other jurisdictions it is held that when property is in the custody of the law, interest will be only allowed to the date that said property came into *legis custodia*. Thomas vs. Minot, 10 Gray (76 Mass.) 263. Williams vs. American Company, 4 Metc. (45 Mass.) 317, 323. In Matter of Murray, 6 Paige (New York) 204, 205.

It appears to us that the logic of these cases that allow interest only to the time of the appointment

of the receiver is irrefutable. The receiver places the corporation in a position of being unable to pay the mortgage when it becomes due. All of the property are assets which could be used for that purpose, is taken away from its possession and goes into the custody of the court. The property is held by the receiver for the benefit of all the creditors and for a just distribution, according to the respective rights.

In the case of Seidler vs. Branford Restaurant, 101 N. J. E. 531, this Court indicated that receivers are but the arms of Chancery, appointed to preserve the property of the corporation for the benefit of all parties in interest and held there that the cost of administration would be prior to the payment of the mortgage debt.

It seems rather unfair that a ruling be made as suggested by the appellant, that is, that he be allowed interest up to the date of the payment, especially where his claim was in dispute, and especially where he delayed. Perhaps in an ordinary case where a mortgage debt is not disputed he should be allowed interest to the date of payment where there is no unnecessary delay caused either by the mortgagee in proving his claim or in making application for the funds to pay his mortgage. Perhaps there is no need in this case to establish a general rule, and we believe that the test suggested by former Vice-Chancellor Lane in the Hoover Steel Ball Company vs. Shaefer Ball Bearing Company case, 90 E. 519, is the best rule. Let each case be determined on the particular circumstances in that case and follow the equitable maxim, "equity is equality."

Conclusion.

It is respectfully submitted that the receiver's report and the order of distribution of the Court of Chancery be affirmed and that appellant affirm.

LEVY, FENSTER & McCLOSKEY,
Solicitors of Levy Brothers Company,
mechanics lien claimant, Respondent.

SAUL TISCHLER,
Of Counsel.