

① 1071

INDEX

	PAGE
Notice of Appeal	1
Petition of Appeal	3
Affidavit Affidavit of Service	7 6
Order Appointing Statutory Receiver	8
Order Continuing Receiver	11
Order	13
Bill of Complaint	16
Schedule A.	21
Affidavit of Peter Eelman	21
Answer of Defendant	24
Order Limiting Creditors	25
Affidavit of Lewis M. Norton	27
Affidavit of James J. Porter	31
Affidavit of William H. Oliver	38
Oath of Receiver	41
Petition for Sale	42
Order to Show Cause	48

New Jersey State Library

NOTICE OF APPEAL.

Filed October 5, 1927.

In Chancery of New Jersey

10

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC.,

Defendant.

On Bill, Etc.

*Notice of
Appeal.*

20

William A. Wakeley, Herbert W. Long, William H. Oliver, Frank W. Greene and James J. Porter, stockholders of Johnson Products Company, Inc., a corporation of New Jersey, and the above-named defendant, hereby appeal from the following orders made in the above-entitled cause, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Alonzo Church, Vice-Chancellor:

30

Order appointing receiver dated August 10, 1927.

Order continuing receiver dated August 15, 1927.

Order to sell dated September 2, 1927.

40

Notice of Appeal.

And from the whole and every part thereof to the Court of Errors and Appeals as the last resort in all causes.

J. GLENN ANDERSON,
Solicitor for and of Counsel
with William A. Wakeley, *et als.*

10

Dated, September 29, 1927.

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

J. GLENN ANDERSON,
Of Counsel with William A. Wakeley, *et als.*

A true copy.

20

THOMAS BARBER,
Clerk.

Service of a true copy of the within notice acknowledged this 7th day of October, 1927.

WILLIAM HARRIS,
Solicitor for Complainant.

30

40

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

PETER EELMAN, trading as Eelman & Company, Complainant-Appellee, <i>vs.</i> JOHNSON PRODUCTS CO., INC., Defendant-Appellant.	}	<i>On Appeal from Court of Chancery.</i> <i>Petition of Appeal.</i>	10
--	---	--	----

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of William A. Wakeley, Herbert W. Long, William H. Oliver, Frank W. Greene and James J. Porter, appellants in the above-entitled cause, respectfully show that:

Petitioners find themselves aggrieved by certain orders made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, in a certain cause in said Court of Chancery wherein said Peter Eelman, trading as Eelman & Company, was complainant, and said Johnson Products Co., Inc., was defendant, as follows:

1. An order bearing date August 10, 1927, in that the said order adjudges that the said defendant Johnson Products Co., Inc., be declared to be insolvent and not able to resume its business in a short time with satisfaction to the public and its creditors, and advantage to the stockholders, and that an injunction issue against the defendant corporation according to the

40

Petition of Appeal.

prayer of the bill of complaint filed in said cause, and appointing James H. Phillips of the City of Newark, and State of New Jersey, as receiver for the creditors and stockholders of said defendant corporation with all powers incident thereto as by reference to said order will more fully and
10 at large appear.

2. An order bearing date August 15, 1927, in the said cause, in the following respect, to wit: That by the said order it was ordered that the said James H. Phillips be continued as receiver of the said defendant corporation with all the powers and authority incident thereto, in pursuance of the said order dated August 10, 1927, and pursuant to the statute in such case made and provided.
20

3. An order bearing date September 2, 1927, in the said cause in the following respect, to wit: That by the said order the said receiver above mentioned was authorized and directed to sell at public auction or private sale, all the assets of the said defendant corporation, more particularly described in said order.

Petitioners appeal from the said orders of the Chancellor, which orders as aforesaid, upon the
30 grounds that the same are erroneous in the following respects:

I. The order dated August 10, 1927, is erroneous in that:

1. The petition and affidavits were insufficient to prove that the defendant corporation was insolvent within the meaning of the statute in such case made and provided.

2. The said petition and affidavits did not set
40 forth facts which, as a matter of law, would

Petition of Appeal.

justify the Court of Chancery in adjudging the said defendant corporation to be insolvent, and to issue an injunction against the said defendant corporation and to appoint a receiver for the creditors and stockholders of said defendant corporation.

II. The order dated August 15, 1927, is erroneous in that: 10

1. The affidavits presented to the Court of Chancery on the return of the rule to show cause were insufficient to justify the continuing of the receiver appointed by the order dated August 10, 1927.

2. The facts set forth in the affidavits offered on behalf of the complainant-appellee above mentioned did not, as a matter of law, justify the Court of Chancery in adjudging the said defendant corporation to be insolvent, and in continuing the receiver appointed by the said order dated August 10, 1927. 20

3. The affidavits submitted to the Court of Chancery on behalf of the appellants, stockholders of the defendant corporation, showed that an action was already pending in the Court of Chancery for the appointment of a custodial receiver, which said action had been instituted by a verified bill of complaint filed prior to the filing of the petition for the appointment of a receiver in the cause above mentioned. 30

III. The order dated September 2, 1927, is erroneous in that:

1. The orders dated August 10, 1927, and August 15, 1927, respectively, having been erroneously made, and being therefore, invalid and illegal, the said order dated September 2, 1927, for the sale of the assets of the defendant cor- 40

Petition of Appeal.

poration therein described, was invalid and void, and of no effect.

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

J. GLENN ANDERSON,
Solicitor for and of Counsel
with Appellants.

*Formal answer filed January
20
28, 1928 by Mr. Harris, Solicitor
of complainant - appellee, by
Consent.*

30

40

AFFIDAVIT OF SERVICE.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

PETER EELMAN, trading as Eelman & Company, <i>Complainant-Appellee,</i> vs. JOHNSON PRODUCTS Co., INC., <i>Defendant-Appellant.</i>	<i>On Appeal from the Court of Chancery.</i> <i>Affidavit of Service.</i>	10
---	--	----

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

NATHAN TURESKY, of full age, being duly sworn upon his oath according to law, deposes and says that: 20

On October 26, 1927, I did serve upon William Harris, Esquire, copy of the attached petition of appeal by leaving same at his offices, #790 Broad street, Newark, New Jersey.

NATHAN TURESKY.

Sworn and subscribed to before me this 29th day of October, 1927. 30

JOSEPH E. WORTHINGTON,
An Atty. at Law of N. J.

40

ORDER APPOINTING STATUTORY RECEIVER.

IN CHANCERY OF NEW JERSEY.

10

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC., a corporation of N. J.,
Defendant.

*On Bill, Etc.
Order
Appointing
Statutory
Receiver.*

20

This matter being opened to the Court by William Harris, Esquire, solicitor for and of counsel with complainant, and it appearing to the Court that the said defendant corporation is insolvent and cannot meet its maturing obligations, and has suspended its business affairs and cannot resume same in a short time with safety to the public and its creditors, and advantage to its stockholders; and it appearing that the defendant corporation has consented to the appointment of a statutory receiver and has filed an answer admitting the allegations set forth in the bill of complaint, and due cause being shown for the granting of this order; it is on this 10th day of August, 1927, on motion aforesaid;

30

ORDERED, ADJUDGED AND DECREED that the said Johnson Products Co., Inc., a corporation, be and it is hereby declared to be insolvent and not able to resume its business in a short time with safety to the public and its creditors, and advantage to the stockholders, and it is further;

40

Order Appointing Statutory Receiver.

ORDERED that an injunction issue against the defendant corporation according to the prayer of the bill of complaint, and that the said corporation, its officers, servants and agents absolutely desist and refrain, and they are hereby enjoined and restrained from exercising any of its privileges or franchises or from collecting and receiving any debts or paying out, selling, assigning or transferring any of its assets, moneys, funds, lands, tenements or effects except to a receiver appointed by this Court and it is further;

10

ORDERED that James H. Phillips of the City of Newark, of this State, be and he hereby is appointed receiver for the creditors and stockholders of said corporation with all powers incident thereto, and that he do perform all the duties imposed upon him by the statutes of this State in such case made and provided, and it is further;

20

ORDERED that the said receiver before entering upon his duties as such receiver, take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey in the sum of \$20,000 conditioned for the faithful performance of his duties to be approved as to form and security thereof by any one of the Special Masters of this Court, and it is further;

30

ORDERED that the creditors and stockholders of said defendant corporation show cause before this Court on the 15th day of August, 1927, at 10:00 o'clock in the forenoon, at the Chancery Chambers, 1 Exchange Place, Jersey City, or as soon thereafter as the matter can be heard, why the said receiver should not be continued, or why some other person should not be appointed receiver in his place, or with him as co-receiver, and it is further;

40

Order Appointing Statutory Receiver.

ORDERED that a notice of this order (which need not be certified) be mailed to all creditors and stockholders of said defendant corporation, whose names and addresses the said receiver shall be able to ascertain at their last known post-office address, within three days from the date hereof.

10

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

20

30

40

ORDER CONTINUING RECEIVER.

Filed August 15, 1927.

IN CHANCERY OF NEW JERSEY.

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC., a corporation,
Defendant.

*On Bill, Etc.
Order
Continuing
Receiver.*

10

20

This matter being opened to the Court by William Harris, solicitor for the complainant and of counsel with receiver, and it appearing to the Court that on the 10th day of August, 1927, an order was made in this cause wherein among other things the creditors of the defendant corporation were to show cause before this Court on the 15th day of August, 1927, at 10 o'clock in the forenoon or as soon as this matter can be heard, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, why James H. Phillips, heretofore appointed receiver in this cause should not be continued as receiver or why some other person should not be appointed receiver in his place and stead or with him as co-receiver, and proof of mailing of a notice of said order to the creditors and stockholders of the said defendant corporation which the receiver was able to ascertain being presented to this

30

40

Order Continuing Receiver.

Court and being herewith filed, and due cause being shown for the granting of this order,

10 It is, on this 15th day of August, 1927, ORDERED that James H. Phillips of the City of Newark, County of Essex, be and he is hereby continued as receiver of the above-named 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 1906) of the State of New Jersey" the supplements thereto and the amendments thereof; and it is further,

20 ORDERED that the bond of said receiver in the sum of \$20,000.00 entered into by him with the Chancellor of the State of New Jersey for the faithful performance of his duties and obligations be and the same is hereby continued.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

30

40

ORDER.

Filed September 2, 1927.

IN CHANCERY OF NEW JERSEY.

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC.,

Defendant.

10

*On Bill, Etc.
Order.*

20

This matter being opened to the Court by William Harris, solicitor for and of counsel with the receiver, and it appearing that heretofore on the 29th day of August, 1927, an order to show cause was issued for the creditors, stockholders, Citizens Title Insurance & Mortgage Co. of Passaic, and Johnson Properties, Inc., to show cause on the 2nd day of September, 1927, why a sale should not be held of all the assets of the defendant corporation consisting of real estate, machinery, appurtenances thereto belonging and merchandise at public auction or private sale, and this matter now coming on before me in the presence of counsel, and upon filing the affidavits of service, and due cause being shown for the granting of this order, it is on this 2nd day of September, 1927;

30

ORDERED that the receiver be and he is hereby authorized and directed to sell at public auction or private sale all of the assets of the defendant

40

Order.

corporation consisting of a certain parcel or tract of real estate lying, and being in the City of Garfield and described as follows:

“All that certain tract or parcel of land and premises in the City of Garfield, in the County of Essex and State of New Jersey.

10 “BEGINNING at the corner formed by the intersection of the southerly side of Dewey street with the easterly side of Cherry street and running thence (1) southerly along the easterly side of Cherry street south 11 degrees 3½ minutes east 175 feet; thence (2) north 79 degrees 49½ minutes east 106.78 to stone monument; thence (3) south 11 degrees 36 minutes east 423.23 feet to a stone monument; thence (4) south 16 degrees 5 minutes east 145.05 feet to a stone monument in lands of the Botany Woolen Co; thence 20 (5) north 79 degrees 46 minutes east 99.90 feet; thence (6) north 15 degrees 56 minutes east 634.50 feet to lands of Van Winkle; thence (7) south 79 degrees 31 minutes west 185.05 feet to a stone monument on the southwesterly corner of Walnut street; thence (8) along the westerly side of Walnut street north 2 degrees 50 minutes west 181.49 feet to a stone monument on the southwest-erly corner of Walnut street and Dewey street; thence (9) along the southerly side of Dewey street south 79 degrees 49½ minutes west 350.68 feet to the point and place of 30 BEGINNING.”

Excepting however, from the above described premises, a parcel conveyed by the said Newark Rubber Company to John Jakubucin et ux, by deed recorded in Book 1112, page 163, etc. which parcel is described as follows:

40 “BEGINNING at a point formed by the intersection of the easterly side of Cherry street with the southerly side of Dewey street; the point being marked by an iron pipe and running thence (1) southerly along the easterly

Order.

side of Cherry street 175 feet; thence (2) easterly and at nearly right angles to Cherry street 106.92 feet to an old stone monument; thence (3) northerly and nearly parallel with Cherry street 52 feet; thence (4) easterly and at nearly right angles with other course described under third course, 19 feet; thence 10 (5) northerly and parallel with the easterly side of Cherry street 125 feet; thence (6) westerly along the southerly line of Dewey street as marked by the iron pipe and old stone monument at the intersection of Walnut street 125 feet to the point or place of BEGINNING.”

TOGETHER with the machinery and appurtenances thereunto belonging and merchandise therein located, and all assets, which sale is to be held subject to a first mortgage on the real estate held by Citizens Title Insurance and Mortgage 20 Company of Passaic and free and clear of an alleged lien, claim or encumbrance by virtue of an alleged mortgage held by Johnson Properties, Inc., a corporation, the lien of said mortgage to attach to the proceeds derived from the sale, and the validity of said lien to be determined at a future time.

E. R. WALKER,

C. 30

Respectfully advised,

ALONZO CHURCH,
V.-C.

BILL OF COMPLAINT.

Filed August 10, 1927.

IN CHANCERY OF NEW JERSEY.

10 *To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey.*

Peter Eelman, trading as Eelman & Company, complainant, of the City of Garfield, County of Passaic, and State of New Jersey, on behalf of complainant and all other creditors and stockholders who may come in and contribute to the expense of this suit, respectfully shows:

20 1. That the complainant is a creditor of the defendant, Johnson Products Company, Inc., a corporation of New Jersey, the defendant, in the sum of \$740.82.

30 2. Defendant is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been incorporated on or about the 26th day of May, 1922, with an authorized capital stock of \$500,000, consisting of 50,000 shares of \$10.00 per share par value and started a business with \$1,000 paid in. On February 20, 1926, complainant charges that at that time the firm known as the Johnson Products Company, a trade name originally established by Charles J. Johnson personally.

3. The business of the defendant is to purchase scrap celluloid and manufacture celluloid tubes and rods and kindred articles.

40 4. In March, 1923, the defendant purchased a factory at Garfield, N. J., and are conducting their affairs at said place.

Bill of Complaint.

5. The officers of the defendant company are Charles J. Johnson, president, and Horace C. Johnson, vice-president and treasurer.

6. Complainant charges the fact to be that the defendant corporation is insolvent within the meaning of the statute of the State of New Jersey in such case made and provided, that the said defendant corporation has no cash on hand with which to pay its creditors on the account long past due and owing, that the said defendant corporation is unable to meet its maturing debts and its business is at a standstill. 10

7. That annexed hereto and marked "Schedule 'A'" is an estimated resume of the financial condition of the company at the present time and that at a forced sale it would not realize sufficient to pay its creditors one hundred cents on the dollar. 20

8. Complainant charges the fact to be that numerous suits have been or are about to be instituted by creditors for the purpose of collecting their bills.

9. Complainant further alleges and therefore charges the fact to be that it is necessary for the preservation of the assets and for the best interest of the creditors and stockholders of the defendant corporation that a receiver be forthwith appointed by this Court for the purpose of taking possession of the assets and for the purpose of holding same for the benefit of the creditors and stockholders and to operate the plant if it is deemed necessary for the best interest of the creditors to fill any contracts which the defendant corporation might have at the present time, and for the purpose of preventing the assets from being dissipated or being 30 40

Bill of Complaint.

wasted by the lack of business operation of the defendant corporation at the present time.

10 10. Complainant charges that the said defendant company is insolvent within the meaning of the statute of this State in such case made and provided; that the business of the defendant company has been and is being conducted at a great loss and prejudicial to the interest of the defendant's creditors and stockholders; that the same is not being and has not been conducted with safety to the public and its creditors and to the advantage of its stockholders; that the said defendant company is unable to pay its debts now long past due and payable, nor is there any probability or likelihood of its being or becoming able to pay same within a reasonable time in the near future; that the said defendant company is unable of realizing upon its assets, even at a great sacrifice, or of securing of future loans to meet current obligations which have already matured and which will mature in the near future; that it will be impossible for the said defendant company in the near future to raise by loans or otherwise, sufficient funds to enable it to prosecute its business with safety to the public and its creditors and advantage to its stockholders.

30 11. That the assets of the said defendant company are subject to judgments, executions and suits that have been or may be brought against the said defendant company by its creditors; that unless the assets of the said company are properly marshalled by a receiver or receivers to be appointed for the said purpose, said corporation will be subject to vexatious and costly litigation, and that in the event of a

40

Bill of Complaint.

forced sale, its property will bring very much less than their fair and reasonable value, all of which will be a great detriment to complainant and the other creditors and stockholders of the defendant corporation; and complainant believes that unless this Court, in view of the facts aforesaid, will deal with its property as a single trust fund, and appoint a custodian receiver, its property will be dissipated to such an extent that its stockholders will realize little or nothing from its holdings and in all probabilities the creditors will be unable to collect their claims or any substantial part thereof against said defendant, and that intervention of this Court is necessary for the protection of said stockholders and creditors of the said company.

Complainant is without adequate remedy at law and therefore prays:

1. That the said defendant, Johnson Products Company, Inc., a corporation, may answer this bill of complaint without oath and each statement therein made.

2. That the said defendant company may be decreed to be insolvent and that its business has been and is being conducted at a great loss and prejudicial to the interest of its stockholders and creditors and that same cannot be conducted with safety to the public and advantage to the stockholders.

3. That a custodial receiver be appointed for said defendant corporation according to the statutes of this State in such case made and provided.

4. That an injunction issue from this honorable Court restraining the said defendant cor-

40

Bill of Complaint.

poration and its officers and servants and agents from exercising any of its rights, privileges or franchises, granted by the State of New Jersey to said corporation and from paying out, selling, assigning or transferring any of its assets, money, funds, lands and tenements or effects
10 except to the receiver appointed by this Court, until the Court shall otherwise order.

5. That the assets of the said defendant corporation and the rights of complainant and the other creditors and stockholders be ascertained.

6. That the Court fully administer the funds being the entire assets of the defendant corporation and for the purpose marshal and ascertain all of its assets, liens, and priorities, if any, existing on all parts thereof and enforce the
20 lawful liens and rights of all the creditors and stockholders of the said defendant corporation as they may be finally ascertained.

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

8. That the complainant may have such other and further relief as the nature of the case may
30 require.

WILLIAM HARRIS,
Solicitor for and of Counsel with Complainant.

Bill of Complaint—Affidavit.

SCHEDULE "A"

Liabilities:

Unsecured\$10,000.00
Secured 42,000.00

Assets:

Land, buildings and machinery....\$125,000.00 10
Manufactured and raw material.... 20,000.00

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

PETER EELMAN, being duly sworn according to law, upon his oath deposes and says:

1. I am the owner of the Eelman & Company. 20

2. I have read the annexed bill of complaint and same is true to the best of my knowledge, information and belief.

3. The complainant in this matter is a creditor of the Johnson Products Company, Inc., a corporation of New Jersey, in the sum of \$740.82.

4. Defendant is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been incorporated on or about the 26th day of May, 1922, with an authorized capital stock of \$500,000 consisting of 50,000 shares of \$10 per share par value and started a business with \$1,000 paid in. On February 20, 1926, complainant charges that \$160,000 was paid in, the corporation succeeding at that time the firm known as the Johnson Products Company, a trade name originally established by Charles J. Johnson personally. 40

Bill of Complaint—Affidavit.

5. The business of the defendant is to purchase scrap celluloid and manufacture celluloid tubes and rods and kindred articles.

6. In March, 1923, the defendant purchased a factory at Garfield, N. J., and are conducting their affairs at said place. The officers of the defendant company are Charles J. Johnson, president, and Horace C. Johnson, vice-president and treasurer.

7. On behalf of the complainant I charge the fact to be that the defendant corporation is insolvent within the meaning of the statute of the State of New Jersey in such case made and provided, that the said defendant corporation has no cash on hand with which to pay its creditors on the account long past due and owing, that the said defendant corporation is unable to meet its maturing debts and its business is at a standstill.

8. That annexed to the bill of complaint of which this affidavit is a part is an estimated resume of the financial condition of the company at the present time and that at a forced sale it would not realize sufficient to pay its creditors 100 per cent. on the dollar.

9. I am informed that numerous suits have been or are about to be instituted by creditors for the purpose of collecting their bills. I believe that it is necessary for the preservation of the assets and for the best interest of the creditors and stockholders of the defendant corporation that a receiver be forthwith appointed by this court for the purpose of taking possession of the assets and for the purpose of holding same for the benefit of creditors and stockholders, and

Bill of Complaint—Affidavit.

it is deemed necessary for the best interest of the creditors to fill any contracts which defendant may have at the present time and for the purpose of preventing the assets from being dissipated.

10. I believe that the defendant company is insolvent within the meaning of the statutes of this State in such case made and provided; that the business of the defendant company has been and is being conducted at a great loss and prejudicial to the interest of the defendant's creditors and stockholders; that the same is not being and has not been conducted with safety to the public and its creditors and to the advantage of its stockholders; that the said defendant company is unable to pay its debts now long past due and payable, nor is there any probability or likelihood of its being or becoming able to pay same within a reasonable time in the near future; that the said defendant company is unable of realizing upon its assets, even at a great sacrifice, or of securing of future loans to meet current obligations which have already matured and which will mature in the near future; that it will be impossible for the said defendant company in the near future to raise by loans or otherwise, sufficient funds to enable it to prosecute its business with safety to the public and its creditors and advantage to its stockholders.

PETER EELMAN.

Sworn and subscribed to before
me this 10th day of August,
1927.

FRANK V. WILKINSON,
Notary Public of N. J.

ANSWER OF DEFENDANT.

Filed August 10, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC., a corporation,
Defendant.

On Bill, &c.
Answer of
Defendant.

20

Defendant answering the bill of complaint filed herein says that it admits all of the allegations in said bill of complaint, and consents to the appointment of a statutory receiver for the reasons as set forth in said bill of complaint.

JOHNSON PRODUCTS CO., INC.,

By CHARLES J. JOHNSON,
President.

30

WEINBERGER & WEINBERGER,
Solicitors of Defendant.

40

ORDER LIMITING CREDITORS.

Filed August 11, 1927.

IN CHANCERY OF NEW JERSEY.

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC., a corporation,
Defendant.

On Bill, &c.
Order
Limiting
Creditors.

10

20

Upon opening this matter to the Court by William Harris, Esquire, of counsel with complainant in the above cause, it is on this 10th day of August, 1927:

ORDERED, that the creditors of the said defendant company to present to the receiver appointed in this cause and prove before him, under oath or affirmation, or otherwise as the said receiver shall direct to the satisfaction of said receiver, their several claims or demands against the said corporation within one month from the date of this order, or they may be excluded from the benefit of such dividends as may thereafter be made and declared by this court, upon the proceeds of the effects of the said corporation, and for the better understanding of the creditors of the said corporation, and what is due to them respectively, the said demands are to be examined as said receiver shall direct or deem necessary, and purchase books and accounts

30

40

Order Limiting Creditors.

placed before him, under oath or affirmation (which oath or affirmation said receiver is hereby authorized to administer), as well as to examine under oath or affirmation, all such witnesses as shall be produced before him, determining the demands of said creditors; and it is further;

10 ORDERED, that the receiver do cause proper advertisements to be published in at least one newspaper published in the City of Garfield, County of Passaic, this date, for the creditors of said corporation to come in before him and prove their claims and demands as in this order directed, and that such publication be made within five days from the date hereof, and be continued in such paper as aforesaid, once per week for the period of four times; and it is further;

20 ORDERED, that within the same time the receiver also mail a notice of this order to the post office address of each of the said creditors if the same can be ascertained, with postage pre-paid thereon.

E. R. WALKER,
C.

Respectfully advised,

30 ALONZO CHURCH,
V.-C.

Affidavit of Lewis M. Norton.

AFFIDAVITS.

Filed August 15, 1927.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>PETER EELMAN, trading as Eelman & Company, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>JOHNSON PRODUCTS COMPANY, INC., <i>Defendant.</i></p>	}	<p>10</p> <p><i>On Petition, &c.</i></p> <p><i>Affidavit.</i></p>
--	---	---

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

LEWIS M. NORTON, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a certified public accountant of the State of New Jersey and a member of the firm of Pogson, Peloubet & Company of 25 Broadway, New York City, New York.

2. During the months of May and June, 1927, at the request of William A. Wakeley and other stockholders of the Johnson Products Company, Inc., I made an examination of the books and records of the said corporation at its place of business in the City of Garfield, Bergen County, New Jersey.

3. From my said examination of the said records and books I found the financial condition of the said company as of December 31, 1926,

Affidavit of Lewis M. Norton.

to be as set forth and shown in the schedule of assets and liabilities annexed hereto and marked "Schedule A."

10 4. The said schedule shows current assets of \$32,724.02 as against current liabilities of \$13,944.27. The said schedule also shows total assets exclusive of "good-will" amounting to \$186,606.82 as against total liabilities to all creditors of \$67,360.69.

5. The records of the said company also show that the company during the first four months of 1927, was doing a business amounting to approximately \$15,000 per month.

20 6. I found from my examination of the records and books that there are at the present time over 250 stockholders in said company most of whom are residents of New Jersey. The amount of capital stock held by stockholders, other than members of the Johnson family, and which the records show were all paid for in cash, amounts to over \$180,000 par value.

LEWIS M. NORTON.

30 Sworn and subscribed to before me this 15th day of August, 1927.

NATHAN TURESKY,
A Notary Public of N. J.

Affidavit of Lewis M. Norton.

SCHEDULE A.

ASSETS

Current:			
Cash	\$ 2,680.16		
Accounts receivable	9,132.22		
Notes receivable	13,015.07		
Notes discounted	13,015.07		10
Merchandise inventory	19,224.44		
Loan receivable	531.16		
E. Horwitz	1,156.04		
		\$ 32,724.02	
Investments			
Capital stock Johnson Prop.	\$ 12,100.00		
Safe Celluloid investment	846.80		
		12,946.80	
Due from Officers			
Charles J. Johnson	\$ 347.13		
H. C. Johnson, Jr.	1,203.78		
		1,550.97	
Fixed	\$126,687.85		
Depreciation reserve	5,921.15		20
		120,766.70	
Deferred:			
Inventory, cases & shipping supplies.	\$ 1,986.75		
Deposit on purchase or r. e.....	500.00		
Inventory Coal	572.75		
Unexpired insurance	408.60		
Capital stock sales expense	14,211.86		
Subscriptions unpaid (less advances)	843.43		
Inventory, stationery and printing...	100.00		
		18,618.39	
Goodwill	250,960.00		
		\$437,566.82	30

Affidavit of Lewis M. Norton.

LIABILITIES

Current:	
Notes payable—trade	\$ 4,848.72
Accounts payable	8,937.55
Leopold Barron	208.00
	\$ 13,994.27
Bonds 8% debenture Gold Bonds	600.00
Mortgages payable:	
10 First mortgage	\$ 10,500.00
Second mortgage	40,000.00
	50,500.00
Accrued:	
Accrued interest	\$ 1,383.93
Accrued taxes	882.49
	2,266.42
Capital:	
Authorized	\$500,000.00
Unissued	59,170.00
	440,830.00
Surplus:	
Balance (deficit)	\$ 74,021.35
20 Profit for year	3,397.48
	70,623.87
	\$437,566.82

30

40

Affidavit of James J. Porter.

IN CHANCERY OF NEW JERSEY.

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC.,
Defendant.

On Petition, 10
&c.
Affidavit.

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

JAMES J. PORTER, of full age, being duly sworn 20
according to law, upon his oath deposes and
says:

1. I am a stockholder in the Johnson Products
Company, Inc., being the holder at the present
time of 306 shares of the par value of \$10 per
share which was paid for by me in cash.

2. On July 26, 1927, a bill of complaint was
filed in the Court of Chancery of New Jersey 30
wherein William A. Wakeley and four other per-
sons, including myself, were complainants and
the Johnson Products Company, Inc., and the
various members of the Johnson family, together
with the Johnson Properties, Inc., and Charles J.
Johnson trading as the Plastic Waste Company,
were made defendants.

3. Almost two weeks after the filing of our
bill as above stated, without any preliminary suit
in a law court and no judgments open of record
so far as I have been able to learn, the petitioner 40

Affidavit of James J. Porter.

in this cause, also of Garfield, instituted his proceedings which are clearly prejudicial not only to all the stockholders, but to the creditors themselves. The amount of petitioner's claim is alleged to be \$740.82, the consideration for which, if any, is not set forth, as against the 30,000 odd
 10 dollars which our bill sets forth as representing our investment and a total stockholder's of over \$180,000.

4. The filing of our bill was the culmination of a long and ineffectual effort on the part of myself, and the other complainants in the said suit, to protect the interests of all the stockholders in the said company against the exorbitant salaries being paid to the members of the Johnson family and against the unlawful and un-
 20 warranted diversion of the assets of the company to the members of the Johnson family, whereby the business of the said company failed to show a profit and whereby the stockholders, including myself, failed to receive any return on their investment for over two years. No dividends have been paid to the stockholders since the year 1924, but beginning with the year 1925, when no dividends were paid to the stockholders, the salary of Charles J. Johnson was
 30 increased from \$15,600.00 per annum to \$26,000.00 per annum, which latter salary he has been paid during the past two years. This increase was granted by the board of directors, consisting of the members of the Johnson family. When it came to the attention of myself and other stockholders that this increase in salary to \$26,000.00 annually had been paid, together with other salary increases to the other members of the Johnson family on the board of directors, we protested vigorously. However, we
 40

Affidavit of James J. Porter.

were told by Charles J. Johnson that while his salary had been nominally raised to the figure above stated, that actually he was only drawing the same amount as during the previous years. We have since learned from the examination of the books of the said company, made by Pogson, Peloubet & Company, that he has actually been
 10 drawing the full amount of the increased salary of \$26,000.00 either in cash or in other value received.

5. We also learned from the said examination made in 1927 that a few years ago the company paid to Pauline Johnson, the wife of Charles J. Johnson, the sum of \$28,531.70 although the records and books of the company show no liability whatsoever to the said Pauline Johnson for any
 20 amount at all.

6. On account of this and other serious irregularities on the part of Charles J. Johnson in his conduct of the business of the said company and on the part of the members of his family, who constitute the board of directors of said company, and because of the fact that the said Charles J. Johnson has entirely ignored or evaded all inquiries on our part as to the condition of the business, we felt that the only other
 30 solution was to attempt to take the management of the business out of the hands of the said Charles J. Johnson and the other members of the Johnson family and to appoint some one familiar with the manufacturing business who would faithfully endeavor to protect the interests of all the stockholders to conduct the business.

7. We do not believe that the said company is insolvent at the present time and are informed by the accountants above mentioned that the
 40

Affidavit of James J. Porter.

books of the said company show that it is not insolvent. We also believe that if this Court should see fit to compel the said Charles J. Johnson and the other members of his family to account for the grossly excessive salaries paid to them, or for such amounts as this Court may
 10 hold to be an excess of a reasonable compensation of their services, and if this Court should see fit to compel the said Pauline Johnson to account to the company for the said amount of \$28,531.70 and to cancel the mortgage to the Johnson Properties, Inc., and to grant the other reliefs prayed for in our bill of complaint, that the said company would not only be solvent, but
 20 could be restored to a strong and sound financial basis and would be able to continue the business with profit to the stockholders. I have not heard of any creditors having started suit or threatening to start suit against the Johnson Products Company, Inc., on account of its failure to pay its bills, nor do I believe that any such suits are contemplated at the present time.

8. I, and the persons who are associated with me in the action in this court above mentioned, carefully investigated the business of the
 30 Johnson Products Company, Inc., at the time we invested our money in it and we were satisfied at that time and are still satisfied that the business is a good-paying business if properly managed, and we are now satisfied, however, that Charles J. Johnson has not and probably never has and never did have any intention of managing the said company's business in the interests of any one but himself, and very inadvertently, his family.

40

Affidavit of James J. Porter.

9. At one time, during a personal conference with Charles J. Johnson, when I and some other stockholders were protesting against the way the business was being managed, Charles J. Johnson said to us personally in substance, "If any one is entitled to anything of this business,
 10 the Johnsons are entitled to it."

10. We strongly feel that the best interest of the stockholders demand that the business should be continued and that it be put in charge of some one who is familiar with the manufacturing and selling on a large scale, and who would conscientiously endeavor to save and protect the investment of over \$180,000.00 made by some 250 persons who have purchased capital stock of this company, and most of whom are residents
 20 of New Jersey.

11. When our bill of complaint with affidavits was filed as aforesaid, in which we prayed that a receiver might be appointed on the ground that the business was being conducted at a loss and greatly prejudicial to the interests of its stockholders, and also praying for an accounting from the members of the Johnson family on account of the grossly excessive and unreasonable salaries paid to them, and for restraint
 30 against Charles J. Johnson from doing business as the Plastic Waste Company, and for an accounting from Pauline Johnson for the sum of \$28,531.70 paid to her as hereinbefore mentioned, and for the cancellation of the \$40,000.00 mortgage held by the Johnson Properties, Inc., and that the lands and premises in the City of Newark owned by Pauline Johnson and known as 10 Goldsmith avenue be declared to be held
 40 in trust for the stockholders of said company,

Affidavit of James J. Porter.

and for other relief, we did not desire to have the affairs of the said company wound up as we well realized that such a procedure would result in a total loss of our investment in the said company.

10 12. We desired to have the allegations in our said bill of complaint heard and considered upon full proofs taken in open court and our desire was that at that time a receiver should be appointed who would be familiar with the business of that nature and he would continue the business so that it might eventually be put back on a paying basis, thereby fully protecting the investment of the stockholders of the said company. This course would also fully protect the creditors of the said company.

20 13. We strongly feel that it would not be for the best interests of all of the stockholders of the said company to have a receiver appointed in accordance with the present application, since such receivership would merely result in winding up the affairs of the company and also result in a total loss to all stockholders of the money invested by them.

30 14. I also believe that the present application is being made for a receivership solely at the instigation of Charles J. Johnson for the purpose of defeating any attempt now on the part of the stockholders of the said company from doing anything to keep the business going and to protect their interests.

40 15. As above stated, the bill of complaint filed on our behalf was filed on July 26, 1927. On August 6, 1927, between four and five o'clock in the afternoon I received a telephone call at

Affidavit of James J. Porter.

my place of business in Keansburg, Monmouth County, New Jersey, from the said Charles J. Johnson. The person who called me at that time said that it was Charlie Johnson speaking. I have talked a number of times over the telephone and at various places with Charles J. Johnson, and well recognized his voice at that time. He referred to the filing of the bill of complaint above mentioned and stated to me in substance, "What is the idea of going about this thing this way?" I said to him that we had waited long enough, having waited over two and one-half years without any dividends being paid. He then said, "Well, my attorney will beat your attorney to it on the receivership end of it and we'll both lose out. I'm closing the place up today."

JAMES J. PORTER.

Sworn and subscribed to before me this 13th day of August, 1927.

NATHAN TURESKY,
A Notary Public of N. J.

20

30

40

Affidavit of William H. Oliver.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>PETER EELMAN, trading as Eelman & Company, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>JOHNSON PRODUCTS COMPANY, INC., <i>Defendant.</i></p>	<p><i>On Petition, Etc.</i></p> <p><i>Affidavit.</i></p>
----	--	--

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

20 WILLIAM H. OLIVER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a stockholder in the Johnson Products Co., Inc., being the holder at the present time of 689 shares of the par value of \$10.00 per share which was paid for by me in cash.
- 30 2. I had a conversation with Charles J. Johnson sometime ago at which time Charles J. Johnson told me that the DuPont Company was attempting to buy out the business and the said company was willing to pay approximately \$500,000.00 for the business.
- 40 3. For this reason, I strongly feel that it would be for the best interest of the stockholders and also of the creditors of the Johnson Products Company, Inc., not to have a receiver appointed in this present insolvency application, but to take the conduct and management of this business out of the hands of Charles J. Johnson and the mem-

Affidavit of William H. Oliver.

bers of his family and to put it into the hands of a receiver who would continue the business in the interest of the creditors and of the more than 250 stockholders of this company who have invested over \$180,000.00 in cash in the company and most of whom are residents of the State of New Jersey.

10

4. I have read over the affidavit of James J. Porter and all the statements contained therein as to our intentions in applying for a receiver and as to the manner in which Charles J. Johnson and the members of his family have conducted the business of the Johnson Products Company, Inc., are true.

5. I would like to state that I have known Charles J. Johnson for a great many years. Five years ago he was a poor man who travelled at that time in a motorcycle with a side-car. Today, as a result of his operations with the Johnson Products Company, Inc., and with the capital paid to said company by innocent stockholders, he has at his disposal several expensive automobiles and lives in a fine home near Weequahic Park in the City of Newark, adjoining the well-known "Bamberger Model Home." He is summering with his family at the present time in a fine home at Bradley Beach, N. J., and for the severe winter months he is accustomed to go to Florida. The luxury in which he is living has been obtained at the expense of the more than 250 men and women, most of whom are New Jersey citizens, who trusted him to the extent of providing him with over \$180,000.00 with which to do business, and many of whom have invested in this business their life savings.

20

30

40

Affidavit of William H. Oliver.

6. The only way in which this money can be saved to these people is to appoint a receiver who understands the business, will continue the business, and restore it to a sound financial basis entirely diversified from the control and influence of Charles J. Johnson and all of the members of his family. The appointment of a receiver in this insolvency proceeding would only accomplish the purpose and object of Charles J. Johnson in bringing about a total loss to the creditors and to all of the stockholders of their investment in said company.

10

7. Charles J. Johnson's motto as he has stated to me on numerous occasions is as follows, "The Johnson family is entitled to everything."

20

WILLIAM H. OLIVER.

Sworn and subscribed to before me this 13th day of August, 1927.

NATHAN TURESKY,
A Notary Public of N. J.

30

40

OATH OF RECEIVER.

Filed August 10, 1927.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>PETER EELMAN, trading as Eelman & Company, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>JOHNSON PRODUCTS COMPANY, a corporation, <i>Defendant.</i></p>	}	<p><i>On Bill, Etc.</i></p> <p><i>Oath of Receiver.</i></p>	10
---	---	---	----

I, JAMES H. PHILLIPS, do swear that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver for the creditors and stockholders of Johnson Products Co., Inc., a corporation, and that without favor or affection.

JAMES H. PHILLIPS.

Sworn and subscribed to before me this 11 day of August, 1927.

HERBERT L. ELINS,
Attorney at Law of N. J.

20

30

40

PETITION FOR SALE.

Filed August 29, 1927.

IN CHANCERY OF NEW JERSEY.

10

Between

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
a corporation,
Defendant.

On Bill, Etc.
Petition
For Sale.

20

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

The petition of James H. Phillips respectfully
shows unto your Honor and alleges:

30

1. That he is the statutory receiver of the
above-named defendant corporation duly qualified
and acting, having been appointed by order of
this Court dated the 10th day of August, 1927,
and was continued as statutory receiver on the
15th day of August, 1927.

2. That as such receiver petitioner has taken
possession of all the assets of the defendant cor-
poration, which consists of a certain parcel or
tract of real estate, situate, lying and being in
the Town of Garfield, County of Bergen, and
State of New Jersey, and more particularly de-
scribed as follows:

40

“BEGINNING at the corner formed by the
intersection of the southerly side of Dewey

Petition for Sale.

street with the easterly side of Cherry street
and running thence (1) southerly along the
easterly side of Cherry street south 11 de-
grees 31½ minutes east 175 feet; thence (2)
north 79 degrees 49½ minutes east 106.78
feet to a stone monument; thence (3) south
11 degrees 36 minutes east 423.23 feet to a
stone monument; thence (4) south 16 min-
utes 5 minutes east 145.05 feet to a stone
monument in lands of the Botany Woolen
Co.; thence (5) north 79 degrees 46 minutes
east 99.90 feet; thence (6) north 15 degrees
56 minutes east 634.50 feet to lands of Van
Winkle; thence (7) south 79 degrees 31 min-
utes west 185.08 feet to a stone monument
on the southwesterly corner of Walnut
street; thence (8) along the westerly side of
Walnut street north 2 degrees 50 minutes
west 181.49 feet to a stone monument on the
southwesterly corner of Walnut street and
Dewey street; thence (9) along the southerly
side of Dewey street south 79 degrees 49½
minutes west 350.68 feet to the point and
place of BEGINNING.

10

20

EXCEPTING, however, from the above de-
scribed premises a parcel conveyed by the
said Newark Rubber Company to John
Jakubucin, et ux, by deed recorded in Book
1112, page 163 etc which parcel is described
as follows:

BEGINNING at a point formed by the inter-
section of the easterly side of Cherry street
with the southerly side of Dewey street; the
point being marked by an iron pipe and run-
ning thence (1) southerly along the easterly
side of Cherry street 175 feet; thence (2)
easterly and at nearly right angles to Cherry
street 106.92 feet to an old stone monument;
thence (3) northerly and nearly parallel with
Cherry street 52 feet; thence (4) easterly
and at nearly right angles with other course
described under third course, 19 feet, thence
(5) northerly and parallel with the easterly
side of Cherry street 125 feet; thence (6)

30

40

Petition for Sale.

westerly along the southerly line of Dewey street as marked by the iron pipe and old stone monument at the intersection of Walnut street 125 feet to the point or place of BEGINNING."

10 3. That the said lands and buildings are covered by a first mortgage in the sum of \$15,000 and petitioner alleges upon information and belief and charges the fact to be that there is due on said mortgage the entire sum of \$15,000 together with interest from April 25, 1927. The said mortgage is held by the Citizens Title Insurance & Mortgage Company of Passaic, New Jersey.

20 4. That Johnson Properties, Inc., a corporation claims to hold an alleged mortgage on the lands and buildings and all the equipment and appliances in said buildings, the said mortgage being both a chattel and real mortgage, and said mortgage is in the sum of \$40,000. Petitioner alleges upon information and belief and charges the fact to be that there is not due on said mortgage the sum of \$40,000. Petitioner further alleges upon information and belief and charges the fact to be that the said mortgage constitutes no valid lien against the lands, premises, machinery and chattels covered, and is not a bona fide lien against petitioner to the amount of said mortgage. That petitioner brings into question 30 the legality of said mortgage and alleges that the property is of a character materially to deteriorate in value pending any litigation concerning said mortgage.

40 5. Petitioner further alleges upon information and belief and charges the fact to be that there is a question concerning the amount due on said mortgage and whether the amount as set forth

Petition for Sale.

in said mortgage was actually given to defendant corporation, and therefore believes it to be to the best interest of this estate that the property and assets of the defendant corporation be sold free and clear of the alleged mortgage of Johnson Properties, Inc., a corporation.

10 6. That the personal property consisting of the machinery, equipment, appliances and material is such as was used in the manufacture of celluloid tubes, rods, and kindred articles.

7. Petitioner has caused an inventory and appraisal to be made of said assets by two disinterested appraisers and the report of said appraisers is about to be filed in this court.

20 8. That there is an installment of interest due on the first mortgage and petitioner believes that they may be taxes due to the Town of Garfield, and as the said business of the said defendant corporation is not being conducted, and petitioner is not securing any income from the business, he fears that he will experience difficulty in meeting the installments of principal and interest on the mortgages when and if due, and in paying the custodians to watch the plant, the merchandise therein contained being of such nature as to be highly inflammable and combustible. 30

9. That petitioner is also having difficulty in keeping the plant and buildings of the above-named corporation property insured against loss by fire for the reason that the merchandise therein contained is celluloid and is highly inflammable and combustible and the insurance companies are loath to carry insurance upon property of this nature, and furthermore on property in the hands of a receiver. 40

Petition for Sale.

10. Petitioner believes it to the best interest of this estate that the lands, premises and buildings thereto, together with the machinery, appurtenances and merchandise be sold at public sale to the highest bidder, either as a whole or separately, or as a going concern.

10 11. Petitioner further believes that a public sale at this time will inure to the benefit of all creditors and it is necessary to have a proper administration of this estate so that the assets of the defendant corporation can be sold at the highest possible figure, and the funds derived from said sale properly distributed amongst the creditors and stockholders entitled thereto according to their proper priority.

20 12. Petitioner further alleges that unless a sale be held within a reasonable time that the assets of the defendant corporation will be dissipated by the payment of installments of interest due on the mortgages and taxes, and petitioner will have great difficulty in raising sufficient cash to pay same unless it be by receiver's certificates, and the assets of the defendant corporation will depreciate in value because of the neglect of the plant, due to the fact that the business is not being conducted.

30 13. Petitioner therefore believes it to be to the best interest of this estate that a sale be held at public auction aforesaid, and because of the question of the validity of the second mortgage, that said sale be held subject to the first mortgage held by the Citizens Title Insurance & Mortgage Company of Passaic, but free and clear of the alleged lien, claim or encumbrance

Petition for Sale.

of the second mortgage, both on the real and personal property.

And your petitioner will ever pray, etc.

JAMES H. PHILLIPS,
Petitioner.

10

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

JAMES H. PHILLIPS, being duly sworn according to law, upon his oath deposes and says that:

1. I am the petitioner named in the foregoing petition, that I have read the contents thereof and the same is true to the best of my knowledge, information and belief.

JAMES H. PHILLIPS.

20

Sworn and subscribed to before
me this 24th day of August,
1927.

HERBERT L. ELINS,
An Attorney at Law of N. J.

30

ORDER TO SHOW CAUSE.

Filed August 19, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

PETER EELMAN, trading as
Eelman & Company,
Complainant,

and

JOHNSON PRODUCTS COMPANY,
INC.,
Defendant.

*On Bill, etc.**Order to
Show Cause.*

20

This matter being open to the Court by William Harris, solicitor for the receiver of the above-named defendant, a corporation, and upon reading and filing the duly verified petition of James H. Phillips, receiver of the above-named defendant company, praying that he may have the advice and direction of this court as to whether the lands, premises and machinery, appliances and merchandise appertaining, together with other properties described in the said petition for sale should be sold at public sale for the best price to be obtained therefor, and due cause being shown for the granting of this order;

30

It is on this 29th day of August, 1927, ORDERED, ADJUDGED and DECREED that the Citizens Title & Mortgage Company of Passaic, Johnson Properties, Inc., the creditors and stockholders of the defendant corporation, and all other persons having interest in this matter, show cause before the Chancellor at the Chancery Chambers, Pru-

40

Order to Show Cause.

dential Building, Broad street, Newark, N. J., on Friday, September 2, 1927, at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard why the receiver should not be authorized, empowered and directed to sell all the assets of the defendant corporation, consisting of a certain parcel and tract of real estate mentioned in the said petition therein described as follows:

10

ALL THAT certain tract or parcel of land and premises in the City of Garfield, in the County of Bergen and State of New Jersey.

"BEGINNING at the corner formed by the intersection of the southerly side of Dewey Street with the easterly side of Cherry Street and running thence (1) southerly along the easterly side of Cherry Street south 11 degrees 3½ minutes east 175 feet; thence (2) north 79 degrees 49½ minutes east 106.78 feet to a stone monument; thence (3) south 11 degrees 36 minutes east 423.23 feet to a stone monument; thence (4) south 16 degrees 5 minutes east 145.05 feet to a stone monument in lands of the Botany Woolen Co.; thence (5) north 79 degrees 46 minutes east 99.90 feet; thence (6) north 15 degrees 56 minutes east 634.50 feet to lands of Van Winkle; thence (7) south 79 degrees 31 minutes west 185.08 feet to a stone monument on the southwesterly corner of Walnut Street; thence (8) along the westerly side of Walnut Street north 2 degrees 50 minutes west 181.49 feet to a stone monument on the southwesterly corner of Walnut Street and Dewey Street; thence (9) along the southerly side of Dewey Street south 79 degrees 49½ minutes west 350.68 feet to the point and place of BEGINNING."

20

30

EXCEPTING, however, from the above described premises, a parcel conveyed by the said Newark Rubber Company to John Jakubucin *et ux*, by deed recorded in Book

40

Order to Show Cause.

1112, page 163, etc., which parcel is described as follows:

10 "BEGINNING at a point formed by the intersection of the easterly side of Cherry Street with the southerly side of Dewey Street; the point being marked by an iron pipe and running thence (1) southerly along the easterly side of Cherry Street 175 feet; thence (2) easterly and at nearly right angles to Cherry Street 106.92 feet to an old stone monument; thence (3) northerly and nearly parallel with Cherry Street 52 feet; thence (4) easterly and at nearly right angles with other course described under third course, 19 feet; thence (5) northerly and parallel with the easterly side of Cherry Street 125 feet; thence (6) westerly along the southerly line of Dewey Street as marked by the iron pipe and old stone monument at the intersection of Walnut Street 125 feet to the point or place of BEGINNING."

20

TOGETHER with the machinery and appurtenances thereunto belonging and merchandise therein located, at public sale or private for the best price that same will bring in cash as an entirety or a going concern, or in parcels, at the discretion of the said receiver, and it is further;

30 ORDERED that at the said time and place the said Citizens Title and Mortgage Company of Passaic and Johnson Properties, Inc., show cause why the sale should not be held free and clear of the lien, claim or encumbrance of their mortgage on the real and personal property, the lien of said mortgage to attach to the proceeds derived from the sale; and it is further;

40 ORDERED, ADJUDGED and DECREED that a copy of this order with a copy of the petition upon which it is based, (which may be served by the solicitor for the complainant) be served upon the said Citizens Title & Mortgage Company of

Order to Show Cause.

Passaic and Johnson Properties, Inc., a corporation, within two days from date hereof and that a copy of this order uncertified be mailed to all known creditors and stockholders of the defendant corporation which the receiver may be able to ascertain within one day hereof.

E. R. WALKER, 10
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

20

30

40

New Jersey Court of Errors and Appeals

PETER EELMAN, trading as Eel-
man & Co.,

Complainant-Appellee,

vs.

JOHNSON PRODUCTS CO., INC.,

Defendant-Appellant.

*On Appeal
from Court
of Chancery.*

BRIEF FOR APPELLANTS.

This is an appeal taken by William A. Wakeley, Herbert W. Long, William H. Oliver, Frank W. Greene and James J. Porter, stockholders of Johnson Products Co., Inc., the defendant, from two orders made in the Court of Chancery on ~~October~~ ^{August} 10, 1927 and August 15, 1927, respectively, appointing a receiver of said corporation and continuing the receiver; and also, from an order for the sale of the real estate of the corporation made on September 2, 1927.

The facts disclosed by the bill of complaint and affidavit annexed thereto, and the affidavits filed by the appellants, are as follows:

The complainant is a creditor in the sum of \$740.82. The corporation was organized on May 26, 1922, with an authorized capital stock of \$500,000. On February 20, 1926, \$160,000 had been paid in. The business had formerly been carried on by Charles J. Johnson, who became the president of the company. The company purchased scrap celluloid and manufactured celluloid tubes and rods and kindred articles. The company had a factory at Garfield, New Jersey, and at the time the bill was filed, August

10, 1927, the company was conducting business at said place (pp. 16 and 22, par. 6 of complainant's affidavit).

The appellants are minority stockholders. On July 26, 1927, the appellants filed a bill in the Court of Chancery against the defendant corporation and various members of the Johnson family; and also against the Johnson Properties, Inc., and Charles J. Johnson, trading as the Plastic Waste Co. (p. 31, par. 2).

The appellants have about \$30,000 worth of stock (p. 32, l. 9). The bill filed by them was intended to protect the interests of all the stockholders against the exorbitant salaries being paid to the members of the Johnson family, and against the unlawful and unwarranted diversion of the assets of the company to the members of the Johnson family, whereby the stockholders have failed to receive any return on their investment for over two years.

The facts contained in the bill of complaint are set forth in detail in paragraph 4 of the affidavit of James J. Porter, page 32. It also appears that a large sum of money had been paid out to Pauline Johnson, the wife of Charles J. Johnson, without any consideration (p. 33, par. 5). In that bill of complaint, there was a prayer for the appointment of someone familiar with the manufacturing business to take charge of the business and to continue the same for the benefit of the stockholders (p. 33, par. 6). It also appears from the affidavit of Mr. Porter (p. 33, par. 7), that the appellants did not consider that the company was insolvent, but their complaint was that the money of the company was being diverted to the personal use of the Johnson family; and Mr. Porter says in his affi-

davit (p. 35, par. 9), that Charles J. Johnson said to him and other stockholders: "If anyone is entitled to anything of this business, the Johnsons are entitled to it." Mr. Porter further says (p. 36, par. 15), that on August 6, 1927, between four and five o'clock in the afternoon, Charles Johnson telephoned to him and said to him: "Well, my attorney will beat your attorney to it on the receivership end of it and we will both lose out. I am closing the place up today." Mr. Porter is corroborated by Mr. William H. Oliver, another stockholder, in an affidavit (p. 38, *et seq.*).

An answer (p. 24) purporting to be the answer of the defendant corporation, was filed on August 10, 1927, on the same day that the bill of complaint was filed. This answer is signed "Johnson Products Co., Inc., by Charles J. Johnson, president, Weinberger & Weinberger, solicitors of defendant." There is nothing to show that the president was authorized to file the answer.

On August 10, 1927 (p. 8) an order was made which recites that the defendant corporation had consented to the appointment of the statutory receiver and has filed an answer admitting the allegations set forth in the bill of complaint. Thereupon it was adjudged and decreed that the said Johnson Products Co., Inc., a corporation be and it is hereby declared to be insolvent and not able to resume its business in a short time with safety to the public and its creditors and advantage to the stockholders, and an injunction is ordered and a receiver is appointed. The order contained a further order to show cause directed to the creditors and stockholders on August 15th, why the receiver should not be con-

tinued. On August 15th, the appellants filed affidavits of Lewis M. Norton, a certified public accountant (p. 27); James J. Porter, a stockholder (p. 31); William H. Oliver, a stockholder (p. 38). On August 15th, an order was made continuing the receiver, who had been appointed on August 10th. There is no recital in this last order of any appearances, except that of William Harris, solicitor for the complainant and of counsel with receiver (p. 11). At the top of page 12, it is stated "and due cause being shown for the granting of this order." On August 11, 1927 (p. 25), an order was made limiting creditors. On August 29, 1927 (p. 48), an order to show cause was made why the property of the corporation should not be sold. This order was made returnable at the Chancery Chambers, Prudential Building, Newark, N. J., on Friday, September 2, 1927, at ten o'clock in the forenoon. At that time, the Chancery Chambers were in the Industrial Building, 1060 Broad street, Newark, N. J. On August 29th, a petition was filed for the sale (p. 42). It is alleged in the petition (p. 44, par. 3) that the lands and buildings are covered by a first mortgage of \$15,000; and in paragraph 4, Johnson Properties, Inc., a corporation, claims to hold an alleged mortgage in the sum of \$40,000. In paragraph 5, the receiver charges upon information and belief that there is a question concerning the amount due on said mortgage and whether the amount as set forth in said mortgage, was actually given to defendant corporation.

SPECIFICATION OF ERRORS.

1. There was no evidence that the corporation was insolvent.
2. There was no evidence that it had suspended its ordinary business for want of funds to carry on the same and was not about to resume its business in a short time.
3. The evidence did not justify the order to sell.

BRIEF OF ARGUMENT.

1. As to insolvency.

Insolvency, as understood by our courts in matters of this kind, is a general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit.

Empire State Trust Co. v. Trustees of Fisher & Co., 67 N. J. Eq. 602;

Wright v. American Finance & Sec. Co., 85 N. J. Eq. 181.

The complainant makes a bare allegation that the corporation is insolvent (p. 17, par. 6) and that the corporation has no cash on hand; and alleges in paragraph 7 that Schedule A annexed to the bill is an estimated resume of the financial condition of the company at the present time. The affidavit of the complainant annexed to his bill is a mere repetition of the allegations in the bill. He does not state any facts within his own knowledge.

Schedule A on page 21, shows assets of \$145,000, unsecured liabilities of \$10,000 and secured liabilities of \$42,000; showing net surplus of

\$113,000. The complainant's claim is \$740.82 and does not appear to have been put in judgment.

This evidence was wholly insufficient to prove insolvency within the meaning of that term, as stated in the authorities cited. But the appellants show by the affidavit of Louis M. Norton (p. 27), that he as a certified public accountant made an examination of the records and books of the company as of December 31, 1926, at which time there were current assets of \$32,724.02, as against current liabilities of \$13,944.27. Mr. Norton also states that the schedule which he annexes to his affidavit, shows total assets exclusive of good-will, to the amount of \$186,606.82 as against total liabilities to all creditors of \$67,360.69. The complainant's schedule shows total liabilities of \$52,000 (p. 21); therefore, the total liabilities had been decreased between December 31, 1926, and August 10, 1927, by over \$15,000. This conclusion is corroborated by Mr. Norton's affidavit (p. 28, par. 5), in which he says that the records of the company show that during the first four months of 1927, it was doing a business amounting to approximately \$15,000 per month. Mr. Norton says in paragraph 6 of his affidavit that the stockholders number 250 and that the stock held by them other than members of the Johnson family, amounts to over \$180,000.

The affidavit of Mr. Porter (p. 37) above referred to, in which he states that Johnson said to him, "My attorney will beat your attorney to it on the receivership and I am closing the place up today," is not denied. It is very significant.

The answer purporting to be that of the company ought not to be accepted as any evidence

of insolvency, because it was not authorized by the stockholders, nor by the directors of the company. The president of the company as such, had no authority to bind the stockholders and the directors by such an admission, nor by consenting to the appointment of a receiver.

A president has no power to execute bond and warrant of attorney to confess judgment.

Stokes v. N. J. Pottery Co., 46 N. J. L. 237.

He has no power to sign a cognovit.

Raub v. Blairstown Cem. Assn., 56 N. J. L. 262; in which the signing is similiar to instant case.

There must be action by the directors.

Demarest v. Spiral Riv. Tube Co., 71 N. J. L. 14;

Thomson v. Cent. Pass. Railway Co., 80 N. J. L. 328.

2. As to suspension of business.

It is clear that Johnson closed the place deliberately for the purpose of joining with the complainant in proceedings to have a receiver appointed, so as to defeat the action of the stockholders. There is not the slightest evidence that the company suspended business for want of funds. On the contrary, the evidence that the company had been doing a business of \$15,000 per month, and on December 31, 1926 (p. 29), had cash on hand of \$2,680.16; accounts receivable, \$9,132.22; notes receivable, \$13,015.07, and other available assets.

There is no evidence whatever that there was any necessity for closing the business, and neither is there any evidence that the plant could not have been opened at once. The inference is

irresistible that Johnson was in collusion with the complainant to defeat the suit brought by the stockholders. The motive of the complainant alone is immaterial, but when it is shown that the president of the corporation is in collusion with him to defeat the minority stockholders, of course a court of equity will not protect such an inequitable and fraudulent combination.

3. As to the order to sell.

There was no evidence to justify the appointment of a receiver on August 10, 1927, without notice. When the affidavits on behalf of the appellants were filed, there was evidence that the business was being conducted by the president of the company and his family in a manner that was detrimental to the stockholders, but there was nothing to show that creditors were being affected by the large salaries that were being paid and the diversion of moneys. Probably the facts did not justify the appointment of a receiver under the Act of 1912 (P. L., p. 535). The appellants were not asking for the appointment of a receiver under that act. They merely wished to be protected as against the conduct of the president of the corporation and that could have been accomplished by an injunction and the appointment of a receiver temporarily until the proper person could be put in charge of the business by the stockholders.

It does not appear that the business is being conducted or has been conducted at a great loss, or at any loss, or that the business cannot be conducted with safety to the public, but it is being conducted in a manner prejudicial to the stockholders or some of the stockholders; and that as it has been conducted by the president and his family, the stockholders are being injured.

What the Court should have done in this case was to dismiss the bill and to have appointed a receiver in the other suit. If, however, this court is of the opinion that a receiver should have been appointed under the Act of 1912, the result would be that the receiver would have no title to the land.

Morse v. Metropolitan S. S. Co., 88 N. J. Eq. 325.

The order to sell should not have been made.

It is respectfully submitted that all the orders should be reversed and that the bill of complaint should be dismissed.

J. GLENN ANDERSON,
FRANK E. BRADNER,
Of Counsel with Appellants.

16 MAY 1 1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

PETER EELMAN, trading as Eel-
man & Company,
Complainant-Respondent,

vs.

JOHNSON PRODUCTS COMPANY,
INC.,
Defendant-Appellant.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF RESPONDENT.

The Facts.

The complainant-respondent filed a verified bill in the Court of Chancery on August 10, 1927, under Section 65 of the Corporation Act of this State (Revision of 1896 as amended by P. L. 1912, p. 535; 2 Comp. Stat. 1640), praying for an injunction to issue against the defendant-appellant and for the appointment of a statutory receiver pursuant to Section 66 of the Corporation Act.

The facts disclosed by the bill of complaint are as follows: The defendant, a corporation of New Jersey, was engaged in the manufacture of celluloid and cellulose products and had a factory in Garfield, Bergen County. The respondent is a creditor of the corporation in the sum of \$740.82. The bill of complaint alleged and charged (p. 17, par. 6, and p. 18, par. 10), among other things, that the business of defendant company has been and is being conducted at a great loss and prejudicial to the interest of the defendant's creditors and stockholders; that the same is not being and has not been conducted with safety to the public and its creditors and to the

advantage of its stockholders; that the said defendant company is unable to pay its debts now long past due and payable, nor is there any probability or likelihood of its being or becoming able to pay same within a reasonable time in the near future; that the said defendant company is unable to realize upon its assets, even at a great sacrifice, or to secure future loans, to meet current obligations which have already matured and which will mature in the near future; that it will be impossible for the said defendant company in the near future to raise, by loans or otherwise, sufficient funds to enable it to prosecute its business with safety to the public and its creditors and advantage to its stockholders.

On the filing of the bill of complaint said defendant filed an answer (p. 24) admitting the allegations of said bill and consenting to the appointment of a statutory receiver for the reasons as set forth in said bill of complaint. This answer was signed on behalf of Johnson Products Company both by one Charles J. Johnson, its president, and by Weinberger & Weinberger, solicitors of the defendant.

Upon the filing of the bill of complaint and the answer, an order to show cause was made (p. 8), which order provided for the appointment of one James H. Phillips as receiver for the creditors and stockholders, to perform all the duties imposed upon him by the statutes of this State and for the creditors and stockholders to show cause on August 15, 1927, why the said receiver should not be continued.

Copies of said order to show cause were mailed to all creditors and stockholders, the affidavit of service being on file in the Court of Chancery and notice having been served upon the solicitor

for the defendant-appellant of application at the May Term, 1928, of this Court to include said order to show cause with affidavit of service annexed upon all the creditors and stockholders, in the state of case. On the return day of said order to show cause the Court continued the receiver (p. 11). That at said hearing no objection was made to the answer filed on behalf of the defendant either as to form or contents, or to the authority of the president or the solicitor to sign said answer.

Said receiver has qualified and has been the duly acting receiver of said defendant corporation since his appointment.

The affidavits printed in the state of case of Lewis M. Norton (p. 27), James J. Porter (p. 31) and William H. Oliver (p. 38) were never served upon the solicitor for the respondent, though they appear to have been filed with the Court on the day of the hearing to continue the receiver. Notice has been served upon the solicitor for the appellants that application would be made before this Court on the opening day of the May Term, 1928, to dismiss the appeal for, among other reasons, the fact that said affidavits were never served as aforementioned.

It appears that there are some 250 stockholders of said defendant corporation and the only stockholders taking this appeal, or apparently interested in same, are five in number.

Prior to the filing of the bill of complaint by the respondent, the said appellant stockholders themselves filed a bill of complaint in the Court of Chancery, which was pending and undetermined at the time respondent's bill was filed. It is not included in the state of case and I am, therefore, annexing same without the affidavits

annexed to this brief, it being called Exhibit A. Said bill is referred to in the affidavit of James J. Porter (p. 31, pars. 2 and 4). This bill of complaint alleges, among other things, that Charles J. Johnson owns more than half of the total amount of the capital stock of the company outstanding (par. 11); that the said board of directors has dissipated the assets of said company and used said assets illegally and has been guilty of gross mismanagement of the financial affairs of said company (par. 17); and that the business of said company has been and is being conducted at a great loss and greatly prejudicial to the interests of the stockholders (par. 27); and prays (par. 2 of the prayers) that this Court may appoint a receiver to take over the conduct and management of the business of the defendant, Johnson Products Company, Inc., for the protection of the complainants and other stockholders of said company; and that (par. 3) an injunction may issue to restrain the said company and its officers and agents from exercising any of its privileges and franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its assets, etc. The bill of complaint seeks the appointment of a receiver under the general equity powers of the Court, as well as under the Corporation Act.

Subsequent to the appointment of the receiver, the said receiver ascertained that it was not advantageous to the creditors and stockholders to carry the assets of real estate and personal property, and he filed a petition for sale (p. 42) praying that an order to show cause might issue for the sale of the assets. The order to show cause for sale is dated August 29, 1927 (p. 48).

That said order to show cause was mailed to all the creditors and stockholders, affidavit of service being on file in the Court of Chancery and notice having been served on the solicitor for the appellants that application would be made on the first day of the May Term, 1928, to include said affidavit of mailing and notice in the state of case. For the purpose of this argument a copy of said order to show cause is annexed to this brief and marked Exhibit B. I desire to call the Court's attention to the fact that though the Chancery Chambers in Newark are in the Industrial Office Building, the Vice-Chancellor to whom the application had been made has his office in the Prudential Building in the City of Newark in Room 638, and that address is contained in the notice, sent to all creditors and stockholders, as the matter was to be heard in his office.

On the return of said order to show cause no one appeared in opposition to the application and the order for sale was made (p. 13).

A notice of the entry of the order, which notice also included the date, time and place of the sale and the date, time and place the sale would be reported by the receiver to the Chancellor, was mailed to all creditors and stockholders. Affidavits of said mailing together with a copy of said notice are on file in the Court of Chancery and notice has been served upon the solicitor for the appellants of application on the opening day of the May Term, 1928, of the Court of Errors and Appeals to include said affidavit in the state of case. For the convenience of the Court, however, I am annexing a copy of said notice, marking same Exhibit C.

The sale of the property took place pursuant to the notice aforementioned, on Friday, September 16, 1927, at the hour of eleven o'clock in the

forenoon. The said sale was attended by the solicitor for the appellants and by several of the appellants, who raised no objection to the sale, and in fact attempted to assist the auctioneer, who was retained by order of the Chancery Court, in securing the highest bid. The sale was reported at the time and place designated in the notice. The said sale was subsequently confirmed by the Court, no one appearing before the Court to raise any objection to said confirmation. An order for confirmation of sale was made September 30, 1927.

A notice of appeal was served on October 7, 1927, approximately seven days after the sale had been confirmed and during which time the assets had been removed by the purchasers and paid for. The deed for the real estate had been signed by the receiver and delivered to the purchaser prior to the service of the notice of appeal.

POINT I.

The Court properly made an order appointing a statutory receiver on the ground that "the corporation is insolvent and not able to resume its business in a short time with safety to the public and its creditors and advantage to the stockholders."

The General Corporation Act of New Jersey (Revision of 1896, amended by P. L. 1912, p. 535) provides:

"Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the

facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises * * *"

Section 65 of the Corporation Act, 2 Comp. Stat. 1640.

The bill of complaint sets forth the statutory grounds for the appointment of a receiver (pp. 17-18, pars. 6, 7, 10 and 11). The answer of the defendant admits all of the allegations of the bill (p. 24). It also appeared from the bill of complaint and answer filed and statements made that the corporation had suspended its business operations for want of funds to carry on the same.

There is no question that the respondent was a creditor whose debt was due at the time the bill was filed and a proper party to bring this action.

Hoopes v. Basic Co., 69 N. J. Eq. 679, holding that a creditor is one whose debt must be due at the time he files the bill.

The respondent was a creditor who was so related to the corporation and its assets as to be entitled to a share of what is divided among the creditors.

Gallagher v. The Asphalt Co. of America,
65 N. J. Eq. 258.

The statutory action for the injunction is heard on summary hearing on bill and affidavits and answer, if filed, and is a final hearing on the question of the insolvency of a corporation under Section 65 of the Corporation Act (as amended P. L. 1912, p. 535; 2 Comp. Stat. 1640).

Bull v. International Power Co., 84 N. J. Eq. 6;

Pierce v. Old Dominion, etc. Co., 67 N. J. Eq. 399.

The Vice-Chancellor, who appointed the statutory receiver and entered the disabling clause against the corporation, had before him at the time of the entry of said order an answer signed by the president of the corporation and a firm of counsellors licensed to practice in this State, appearing on behalf of the corporation, which answer admitted all the allegations of the bill of complaint. The allegations of insolvency and the other statutory allegations in the bill of complaint were admitted by the corporation through its attorneys. *Prima facie*, this was sufficient for the entry of the disabling clause and the appointment of a statutory receiver.

It was held in the case of *State v. Passaic County Agricultural Society* in the New Jersey Supreme Court, 54 N. J. Law 260, on page 261, that

“* * * In fact corporations cannot appear in person. They must appear by attorney. In this case the record shows that Robert I. Hopper, one of the practicing attor-

neys of this court, appeared and filed a demurrer to the indictment. If he had appeared, knowing that he had no authority to do so, it would have been in contempt of the trial court. His appearance was presumably lawful; otherwise the trial court should in all cases where a corporation appears by attorney, require him to establish his right to do so by competent evidence. Such has never been the practice. The burden is on the corporation that the appearance was unauthorized. As the record stands, it sufficiently appears that the defendant was in court to answer the indictment.”

It was further held in *Beebe v. The George H. Beebe Company* in the New Jersey Supreme Court, 64 N. J. Law 497, on page 498, that

“The suggestion that it requires a resolution of the Board of Directors to authorize an attorney to represent a corporation in our courts is equally unsubstantial. The president, as the chief executive officer of a corporation, has authority, *virtute officii*, to take all steps necessary for the defense of his company in litigations in which it may be involved, including the employment of an attorney for the purpose.”

And while it may be that the president of the company as such might not bind its stockholders by an admission of insolvency, nevertheless, the answer filed by counsel was competent. The appellants stood by and made no objection to the answer. No proof was presented to the Court, either by affidavit or otherwise, that the filing of the answer was not authorized by the board of directors. There was proof before the Court that would justify it in finding the corporation to be insolvent. It appears by the affidavit of the appellant Porter (p. 31) and by the bill of complaint to which he refers, attached to this brief and marked Exhibit A, that Charles J. Johnson,

Horace C. Johnson and Frank Johnson were the directors of the company, and that the said Charles J. Johnson was the owner of a majority of the stock of the company, and it may be presumed that the action of the said Charles J. Johnson in acknowledging the insolvency of the company was done with the approval of his board of directors, since nothing appears by affidavit or otherwise in the case to prove or suggest the contrary.

In *Hitchcock v. American Pipe & Construction Co.*, 89 N. J. Eq. 440 (reversed by the Court of Errors and Appeals, 90 N. J. Eq. 576, on question of counsel fee only), Vice-Chancellor Lane, in discussing the propriety of directors consenting to the appointment of a statutory receiver, reiterated the opinion of Vice-Chancellor Stevenson in *Elm v. International Steam Pump Company* (no opinion filed) at page 449:

“* * * The duty imposed by this section is not often performed, and for this reason: It is generally more satisfactory, when a corporation gets into the condition that this corporation was in, to have a receiver appointed as quickly as possible. Consequently, instead of within ten days calling together the stockholders, the honest directors procure the institution of the action which now has been brought in this court, and which any stockholder or any creditor can bring; and then they come before the court, with the corporation, and they consent to an immediate, summary hearing. The statutory decree is passed and thereupon the statutory receiver is appointed; and counsel will bear in mind that no statutory receiver can be appointed until after the disabling decree, the final decree, is passed.”

The only statement purporting to show a financial condition of the company contrary to that set out in the bill of complaint was the statement

in the affidavit of the appellant Lewis M. Norton (pp. 29 and 30) which purported to show a financial condition existing seven months prior to the adjudication of insolvency.

The affidavits of Lewis M. Norton and James J. Porter were not filed until the hearing on the order to continue the receiver and were not before the Court at the time the Court made the order adjudging the corporation insolvent and appointing the statutory receiver and could not have been considered by the Court at that time. But when considered by the Court upon the hearing for continuance of the receiver, the facts therein set forth were sufficient to justify the Court in continuing the receiver.

POINT II.

The Court properly made the order continuing the receiver.

Upon the return of the order to show cause why the receiver should not be continued, the appellants appeared and filed affidavits set out in the state of case. They made no objection whatever to the admission of insolvency; but on the contrary furnished proof of the gross mismanagement of the corporation by its officers; of the inability of the corporation to operate at a profit and showed the fact that an actual deficit existed of upwards of \$74,021.35; they furnished no proof that the company was about to resume its business which admittedly had been discontinued by the president and directors; that while it was conducted it was carried on at a great loss, to wit, at a loss of \$74,021.35 deficit in assets of the company, and in a manner greatly prejudicial to the interests of its creditors and stockholders, in that large sums had been paid to the officers of the

corporation in excess of amounts that should have been paid to them for their services; unlawful payments had been made to the relatives of the officers of the corporation although it appeared that the corporation was not indebted to such persons; and offered no proof that the business could be resumed by the corporation. The only objection made by the appellants is that the business of the corporation should be conducted by a receiver of their selection rather than the receiver appointed by the Court.

The affidavit of the appellant Norton shows that on December 31, 1926, eight months prior to the filing of the bill and eight months prior to the closing of the business, the corporation had on hand only \$2,680.16 of cash and practically no quick assets to meet current liabilities of over \$16,000, and shows two mortgages upon the property aggregating \$50,500 upon which interest of \$1,767.50 would presumably accrue between December 31, 1926, and August 10, 1927, and showed a deficit of \$74,021.35 up to December 31, 1926 (p. 30).

It does not follow that a corporation is not insolvent within the meaning of the act because it may ultimately have a surplus after winding up its affairs. The test is: Can the corporation in the present or near future meet its maturing obligations either by available assets or by an honest pledge of its credit?

Reinhardt v. Interstate Telephone Co., 71 N. J. Eq. 70;

Catlin v. Vichachi Mining Co., 73 N. J. Eq. 286.

The affidavit of the appellant James J. Porter contains the statement (p. 32, par. 4):

“The filing of our bill was the culmination of a long and ineffectual effort on the part of

myself, and the other complainants in the said suit, to protect the interests of all the stockholders in the said company against the exorbitant salaries being paid to the members of the Johnson family and against the unlawful and unwarranted diversion of the assets of the company to the members of the Johnson family, whereby the business of the said company failed to show a profit and whereby the stockholders, including myself, failed to receive any return on their investment for over two years.” * * *

(p. 33, par. 6, l. 30):

“* * * we felt that the only other solution was to attempt to take the management of the business out of the hands of the said Charles J. Johnson and the other members of the Johnson family and to appoint some one familiar with the manufacturing business who would faithfully endeavor to protect the interest of all the stockholders to conduct the business.”

(p. 34, par. 8, l. 35):

“* * * that Charles J. Johnson has not and probably never has and never did have any intention of managing the said company's business in the interests of anyone but himself, and very inadvertently, his family.”

(p. 35, par. 10):

“We strongly feel that the best interest of the stockholders demand that the business should be continued and that it be put in charge of some one who is familiar with the manufacturing and selling on a large scale, and who would conscientiously endeavor to save and protect the investment of over \$180,000.00 made by some 250 persons who have purchased capital stock of this company, and most of whom are residents of New Jersey.”

(pp. 35-36, par. 11):

“When our bill of complaint with affidavits was filed as aforesaid, in which we prayed

that a receiver might be appointed on the ground that the business was being conducted at a loss and greatly prejudicial to the interests of its stockholders, and also praying for an accounting from the members of the Johnson family on account of the grossly excessive and unreasonable salaries paid to them, and for restraint against Charles J. Johnson from doing business as the Plastic Waste Company, and for an accounting from Pauline Johnson for the sum of \$28,531.70 paid to her as hereinbefore mentioned, and for the cancellation of the \$40,000.00 mortgage held by the Johnson Properties, Inc., and that the lands and premises in the City of Newark owned by Pauline Johnson and known as 10 Goldsmith avenue be declared to be held in trust for the stockholders of said company, and for other relief."

(p. 36, par. 12, l. 12):

"* * * our desire was that at that time a receiver should be appointed who would be familiar with the business of that nature and he would continue the business so that it might eventually be put back on a paying basis, thereby fully protecting the investment of the stockholders of the said company. * * *"

Affidavit of appellant Oliver (p. 40, par. 6):

"*The only way in which this money can be saved to these people is to appoint a receiver who understands the business, will continue the business and restore it to a sound financial basis entirely divorced from the control and influence of Charles J. Johnson and all of the members of his family. The appointment of a receiver in this insolvency proceeding would only accomplish the purpose and object of Charles J. Johnson in bringing about a total loss to the creditors and to all of the stockholders of their investment in said company.*"

Also the paragraphs of the bill of complaint, annexed hereto as Exhibit A, mentioned in the several affidavits.

Upon the affidavits filed by the appellants and the pleadings herein, the Court was justified in appointing a receiver not only upon the ground of insolvency but also upon the ground that the business of the corporation has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and under the general equity powers of the Court.

In *Morse v. Metropolitan Steamship Co.*, 87 N. J. Eq. 217, affirmed by the Court of Errors and Appeals in 88 N. J. E. 325, with modification on other points, Vice-Chancellor Lane stated at p. 220:

"I do not find that the Courts of this State have in anywise limited the general doctrine which prevails in England and throughout this country that, wherever because of gross abuse of trust, because of dissensions among the members of the board of directors or the stockholders, because there is no properly constituted board, or because the company has failed of its purpose, there is a necessity for judicial intervention, a court of equity may intervene under its general jurisdiction and appoint a receiver and grant such other relief as may be necessary. The text-book authorities are to the effect that the power exists, but, of course, must be exercised with discretion. * * *"

Where a statutory receiver was appointed without notice and subsequently an appearance was filed by the corporation and an adjudication entered on the merits of the case and there was ample testimony before the Vice-Chancellor which afforded a reasonable basis to his findings that the appellant corporation was insolvent and the

appointment of a receiver necessary, the finding was not disturbed by the Appellate Court.

Shaw v. Standard Piano Co., 87 N. J. Eq. 351.

The appellants in this case cannot derive any benefit by a reversal of the decree of the Chancellor in the appointment of the receiver, because they were not aggrieved by the order appointing the receiver, they themselves having sought the appointment of a receiver for the corporation and having shown the corporation to be in an unsound financial condition.

Shaw v. Standard Piano Co., *supra*.

Counsel for appellants urge that the bill of complaint in this suit be dismissed and that a receiver be appointed in the suit begun by them. The practice followed by the appellants in the suit instituted by them was improper. The statute provides for the filing of a bill of complaint setting forth the facts and circumstances of the case, an application for a writ of injunction and the appointment of a receiver or trustee, and for a summary hearing on such notice as the Court, by order, may direct, and the hearing of affidavits, proofs and allegations which may be offered on behalf of the party. Section 65, 2 Comp. Stat. 1640.

The practice followed by the appellants was the filing of a bill of complaint and issuance of subpoena. The appellants did not apply to the Court for an order directing what notice should be given the corporation or its stockholders and officers. Such practice is clearly erroneous.

Pierce v. Old Dominion etc. Co., *supra*.
Bull v. International Power Co., *supra*.

POINT III.

The Court properly ordered the receiver to sell the assets.

The assets of the Johnson Products Co. consisted of a certain factory in Garfield, New Jersey, in which factory were certain machinery used in the manufacture of cellulose and celluloid products and merchandise consisting of cellulose and celluloid products. At the time the receiver was appointed the business of the corporation was suspended (p. 45, par. 8, l. 21) and was not conducted by the receiver. No income was secured by the receiver from the business and the receiver filed the petition for sale (p. 42) in which he alleged these facts and also alleged that an installment of interest was due on the first mortgage (p. 45, par. 8) and taxes were due to the Town of Garfield, which he feared he would experience great difficulty in meeting and in securing sufficient cash to pay the custodian to watch the plant, the custodian being necessary because of the highly inflammable and combustible material (p. 45, par. 9). The receiver also alleged in his petition for sale that he was having difficulty in keeping the plant and buildings of the corporation insured against loss by fire because of the inflammable and combustible nature of the materials and the insurance companies were loath to carry insurance upon property of this nature, and that he believed (pp. 45-46, pars. 9-10) the best interests of the estate would be protected by a sale.

Upon the filing of the petition an order to show cause was signed (p. 48) and upon the return day thereof, after notice had been sent to all creditors and stockholders (Exhibit B) and no one appearing in objection thereto, the order for sale was

signed. As mentioned before in this brief, the solicitor for the appellants and several of the appellants were at the sale and did not raise any objection thereto. In fact they attempted to assist the auctioneer in securing the best price possible. The sale was confirmed by the court, no one appearing in objection to the confirmation.

The receiver upon his appointment was vested with all the real and personal property of the corporation and all its franchises, rights, privileges and effects. (Corporation Act, P. L. of 1896, p. 299; 2 Comp. Stat. 1644, Section 68.)

There was no reason for the receiver keeping the property as it was being carried at a loss, no income being derived therefrom, and it would depreciate in value if left for any length of time. There was no objection to the sale or confirmation thereof, nor was any suggestion made to the receiver or to the Court that the property should be held by the receiver for any particular reason. The receiver expeditiously sold the assets for the purpose of securing the best price obtainable. Even if a receiver had been appointed not on the ground of insolvency but on the other statutory grounds or under the bill of complaint filed by the appellants which they suggest (p. 9 of appellants' brief) the receiver would still be vested with title to the property.

Section 86a of the Corporation Act (P. L. 1919, p. 45, Chap. 208; Cum. Supp. to Comp. Stat., Vol. 1, p. 680, Sec. 47-86-j) holds:

"In all cases in which the Court of Chancery may issue an injunction under the provisions of section sixty-five of the act to which this act is a supplement as amended, or as it may hereafter be amended, the following provisions of the said act shall apply, to wit: * * * section sixty-eight * * *

notwithstanding any language in any such sections as would appear to limit their application to cases in which the appointment of a receiver is made on the ground of insolvency."

POINT IV.

The appellants improperly brought the appeal.

There are approximately 250 stockholders in this corporation besides the creditors (affidavit of William H. Oliver, p. 39, par. 10).

Apparently the appellants are the only stockholders who are not agreeable to the personnel of the receiver.

The notice of appeal (p. 1) and the petition of appeal allege that the appeal is prosecuted by five stockholders.

Stockholders may bring suit in their own names to enforce a right of the corporation without first requesting the directors to sue, when it is made to appear that, if such request had been made, it would have been refused or, if granted, that the litigation following would necessarily be subject to the control of the persons opposed to its success.

Barry v. Moeller, 68 N. J. Eq. 483;

Knoop v. Bohmrich, 49 N. J. Eq. 82, affirmed on appeal 50 N. J. Eq. 485.

If the stockholders bring the suit in their own name, the corporation must be made a party defendant. *Barry v. Moeller, supra*, which holds the company is an indispensable party to a suit of this nature. Cook on Stock and Stockholders and Corp. Law, Sect. 738.

The appellants did not make the corporation a party and did not bring the appeal for the benefit of all creditors and stockholders.

The case of *Willoughby v. Chicago Junction Railways & U. S. Co.*, 50 N. J. Eq. 656, holds:

“ ‘Wherever a cause of action exists primarily in behalf of the corporation against directors, officers and others for wrongful dealing with corporate property, or wrongful exercise of corporate franchises, so that the remedy should regularly be obtained through a suit by and in the name of the corporation, and the corporation either actually or virtually refuses to institute or prosecute such a suit, then, in order to prevent a failure of justice, an action may be brought and maintained by a stockholder or stockholders, either individually or suing on behalf of themselves and all others similarly situated, against the wrongdoing directors, officers and other persons; but it is absolutely indispensable that the corporation itself should be joined as a party, usually as a co-defendant. The *rationale* of this rule should not be misapprehended. The stockholder does not bring such a suit because his rights have been directly violated, or because the cause of action is his, or because he is entitled to the relief sought. He is permitted to sue in this manner simply in order to set in motion the judicial machinery of the Court. The stockholder, either individually or as a representative of the class, may commence the suit, and may prosecute it to judgment; but in every other respect the action is the ordinary one brought by the corporation. It is maintained directly for the benefit of the corporation, and the final relief, when obtained, belongs to the corporation, and not to the stockholder plaintiff. The corporation is therefore an indispensably necessary party, not simply on the general principles of equity pleading, in order that it may be bound by the decree, but in order that the relief, when

granted, may be awarded to it, as a party to the record, by the decree. This view completely answers the objections, which are sometimes raised in suits of this class, that the plaintiff has no interest in the subject-matter of the controversy nor in the relief. In fact, the plaintiff has no such direct interest. The defendant corporation alone has any direct interest. The plaintiff is permitted, notwithstanding his want of interest, to maintain the action solely to prevent an otherwise complete failure of justice.’

“Cook on Stockholders (1st Ed.), section 692, says: ‘The rule that the corporation itself is an indispensable party defendant to such suit is due to the fact that all other possible future suits by the corporation are thereby prevented, the rights of the corporation are duly ascertained, and the remedy made effectual against the corporation as well as others.’”

Hence the appeal filed herein should be dismissed by this Court for failure to make the defendant corporation a party to the appeal so that it could appear and defend or answer any of the allegations of appellants.

POINT V.

The appellant stockholders are estopped from questioning the appointment of the receiver and the sale of the property.

As mentioned before in this brief, the appellants at no time ever objected to the form or contents of the answer filed by the defendant corporation admitting insolvency. The bill of complaint originally filed by the appellants (Exhibit A) seeking the appointment of the receiver, and the affidavits of appellants (pp. 27, 31, 38) show that they themselves desired the appointment of a receiver.

They did not object to the order for sale, the sale or the confirmation of the sale. They stood by and permitted the receiver to deliver the assets to the several purchasers thereof. Their silence works an estoppel for they had specific opportunities and a real and apparent duty to speak before the Court and object to the applications for sale and confirmation of sale and warn the receiver of their intention to take an appeal before delivery of the assets to the various purchasers. They did not serve a notice of appeal until after delivery had been made to the purchasers of the property. *Minton v. Sutton*, 5 N. J. Advance Reports 91 (not yet officially reported in New Jersey Law or Equity reports) in which it was held that in order to work an estoppel the silence must be under such circumstances that there are both a specific opportunity and a real apparent duty to object.

The appellants should have entered objection on the record in the court below to the entry of the orders appealed from so that any such error might have been called to the attention of the Court.

Conclusion.

Respondent is a bona fide creditor of the corporation for \$740.82. The bill of complaint filed alleges the statutory grounds for the appointment of a receiver. The answer of the defendant corporation admitted the allegations of the bill which were sufficient for the Court to appoint a receiver. If the Court does not think a receiver should have been appointed under the bill of complaint of the respondent, however, the bill of the appellant stockholders prayed that a receiver be appointed under their bill and it is alleged in

their brief (p. 9) that what the Court should have done is to dismiss the bill of the respondent and appoint a receiver in the other suit (suit of appellant stockholders). It appears that the appellants are dissatisfied not with the appointment of the receiver but as to the personnel of the receiver. The personnel of the receiver is discretionary with the Court.

In balancing the equities the Court should take into consideration, not only the fact that the appeal is taken by a small minority of stockholders, but also the fact that these appellants filed a bill of complaint in the Court of Chancery seeking the appointment of a receiver.

The bill filed by the respondent was for the protection of the interests of all the stockholders and creditors. There was no ulterior motive in the filing of same. There was no personal gain to the respondent. There is no significance as far as the respondent is concerned to any statement Johnson may have made to Mr. Porter. Respondent, having a claim which the corporation could not pay, filed the bill of complaint for distribution of the assets among all the creditors and stockholders. The respondent was not and is not in league with the president of the corporation, nor is there any collusion shown to have existed. The respondent exercised his statutory right for his benefit as well as the benefit of other creditors.

There is an atmosphere injected in the brief of appellants of fraud and collusion which is not warranted by any of the facts and circumstances of the case.

It is respectfully submitted that the appeal from the several orders should be dismissed.

WILLIAM HARRIS,
Of Counsel with Complainant-Respondent.

EXHIBIT A.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey.*

Complainants, William A. Wakeley of the city of Orange, County of Essex; Herbert W. Long, of the city of Newark, County of Essex; William H. Oliver, of the city of Newark, County of Essex; Frank W. Greene of the township of Little Falls, County of Passaic, and James J. Porter, of the borough of Keansburg, County of Monmouth; on their own behalf and on behalf of any of the stockholders of Johnson Products Company, Inc., a corporation of New Jersey who may join herein, respectfully show that:

FIRST CAUSE OF ACTION.

1. The defendant, Johnson Products Company, Inc., is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at Garfield, Bergen County, New Jersey.

2. The said company is engaged in the business of manufacturing and selling at wholesale and retail celluloid and cellulose sheets and scrap and other products manufactured from celluloid scrap.

3. The complainants are stockholders in the said company and have been such since the early part of the year 1923. Complainants own in the aggregate 3,055 shares of the capital stock of said company, having a par value of \$10.00 per share.

4. The said company was incorporated on or about April 25, 1922 for the purpose of taking over the business formerly conducted by the

defendant Charles J. Johnson, trading as the Johnson Products Company. The total authorized capital stock of said Johnson Products Company, Inc. is \$500,000, divided into 50,000 shares of a par value of \$10.00 each.

5. The said defendant company shortly after its incorporation, in pursuance of resolutions of the stockholders, viz.; the defendants, Charles J. Johnson, Horace C. Johnson, Jr., and Frank E. Johnson, and the Board of Directors consisting of the same defendants, purchased the said business formerly conducted by the said defendant, Charles J. Johnson for the sum of \$250,960.00.

6. At the time of said purchase the total amount of net assets over liabilities, exclusive of the item designated as "good will," was the sum of approximately \$19,000.00.

7. The said item designated as "good will" was included in the said assets at the valuation of \$250,960.00, this being the amount paid by the said company to said defendant Charles J. Johnson for the business of said defendant so purchased as aforesaid.

8. The said purchase price of \$250,960.00 above mentioned was not paid to defendant Charles J. Johnson in cash, but was paid in capital stock of the defendant company, Johnson Products Company, Inc., 25,096 shares of the capital stock of said company having a par value of \$10.00 per share being issued in payment of said business, 25,094 shares of the capital of said company being issued to defendant, Charles J. Johnson, and 1 share being issued to each of the defendants, Horace C. Johnson, Jr., and Frank E. Johnson solely to enable them to qualify as incorporators and directors of said company. No value was paid by said last two named defendants for said share issued to each of them.

9. Said 25,094 shares issued as aforesaid to defendant Charles J. Johnson constituted more than half the total authorized capital stock of said company, so that the said defendant, Charles J. Johnson, from the beginning of the existence of said company has been able to completely control the management, direction and supervision of all the affairs and business of said company.

10. The defendant, Charles J. Johnson, always has been and still is the President of said company and a member of the Board of Directors. The defendant, Horace C. Johnson, Jr., a brother of defendant Charles J. Johnson, has been and still is Vice President and Treasurer of said company and a member of the Board of Directors. The defendant, Frank E. Johnson, a brother of defendant Charles J. Johnson, was at the beginning of said company's existence and is at the present time Secretary of said company and a member of the Board of Directors. During the years 1924 and 1925 Edward Horwitz, a brother-in-law of defendant, Charles J. Johnson, was Secretary of said company and a member of the Board of Directors, and he is at the present time and always has been employed as shipping clerk of said company. No other persons have ever held any office in said company or been a member of the Board of Directors of said Company.

11. The defendant, Charles J. Johnson, at the present time owns more than half of the total amount of capital stock of said company now outstanding.

12. Shortly after its incorporation the defendant, Johnson Products Company, Inc., inaugurated a campaign for the sale of capital stock of said company to the public, which was continued during the years 1922, 1923, 1924, 1925,

and 1926. As a result of this campaign capital stock having a par value of \$182,272.80 was sold to the public, including the shares purchased by complainants as aforesaid. The said capital stock was sold directly to the public by the said company through its agents, servants and employees.

13. The said defendant company, Johnson Products Company, Inc., through its agents, servants and employees, represented to complainants as an inducement to complainants to purchase said capital stock, that the said company was earning large profits and that it was paying dividends at the rate of 16% per annum. Complainants, relying on said representations, purchased the shares of capital stock as herein before mentioned.

14. The said company during the years 1923 and 1924 did declare and pay to the stockholders of said company, including complainants, dividends at the rate of 16% and 12% respectively for said years.

15. During the year 1924 a 2% stock dividend was also declared by the Board of Directors above-mentioned and paid to the stockholders of said company.

16. Since 1924 no dividends have been declared or paid by said company, although the volume of business done by said company has been substantially the same during 1925 and 1926 as during previous years during which dividends were paid as aforesaid.

17. The said dividends so declared and paid as aforesaid were either declared by the Board of Directors above mentioned solely for the purpose of assisting the campaign of the sale of capital stock above mentioned, and were not paid out of the surplus or net profits arising from the business of said company, but were paid wholly

or in part from the proceeds of the sale of said capital stock to the public, or else the business of the said company has been sufficient during the years 1925 and 1926 to warrant the declaration and payment of dividends by the Board of Directors of said company, but that the said Board of Directors has dissipated the assets of said company and used said assets illegally as herein-after mentioned and has been guilty of gross mismanagement of the financial affairs of said company, which has resulted in their failure and refusal to declare and pay any dividends to the stockholders of said company since the year 1924.

18. During the years 1923 and 1924 the defendant, Charles J. Johnson received a salary of \$15,600 per annum for his services as President of said company and during the years 1925 and 1926 the said defendant Charles J. Johnson was paid a salary of \$26,000 per annum for his services as such President. The defendant, Horace G. Johnson, Jr. has been paid the following salaries for his services as Vice President and Treasurer of said company: for 1923, \$5,200.00; 1924—\$5,200.00; 1925—\$6,500.00; 1926—\$7,800.00. The defendant, Frank E. Johnson, who is now Secretary of said company has been receiving the sum of \$15.00 per week since the year 1925 although he has never at any time performed any services whatever for the said company. The defendant, Edward Horwitz, receives a salary of \$3,900.00 per annum as shipping clerk. The said salaries have in each case been granted by the Board of Directors of said company which has been always composed of the said defendants, as aforesaid.

19. The said salaries are grossly excessive and are far above the reasonable value of the services rendered to the company by the said defendants respectively. The granting of said salaries and

the payment thereof to the said defendants constitutes a fraud upon the stockholders of said company.

20. On or about May 29, 1924 the said Company paid to Pauline Johnson, wife of the defendant, Charles J. Johnson, the sum of \$28,531.70. The records of said company do not show any liability to the said Pauline Johnson and this payment was entered on the books as an adjustment of the surplus account. Said payment was authorized by the Board of Directors of said company composed of at that time the defendants, Charles J. Johnson, Horace C. Johnson, Jr., and Edward Horwitz.

21. Said payment to the defendant Pauline Johnson constituted a fraud upon the stockholders of said company in that no amount was due said defendant, Pauline Johnson, from said company and the said defendant, Pauline Johnson, received and accepted the said payment with full knowledge of the fact that the said company was not indebted to her in any amount and was received by her with intent to defraud the stockholders of the said company.

22. On January 8, 1925 the defendant, Johnson Products Company, Inc., executed a mortgage to defendant, Johnson Properties, Inc., in the sum of \$40,000.00. Said mortgage covers the premises in the city of Gerfield, Bergen County, New Jersey, now owned and occupied by the defendant, Johnson Products Inc. in the conduct of its business. Said defendant, Johnson Properties, Inc., is a corporation organized and existing under the laws of the State of New Jersey and was formed by the defendants Charles J. Johnson, at the time said mortgage was given.

23. The outstanding capital stock of the said defendant, Johnson Properties Inc., is \$40,000.00,

almost all of which is owned by defendant, Charles J. Johnson and the defendant, Johnson Products Company, Inc. The full consideration for the said mortgage for \$40,000.00 above-mentioned was not paid to the Johnson Products Company, Inc. in cash, only \$17,900.00 being paid in cash to the defendant, Johnson Products Company, Inc. The balance of said mortgage was paid by transferring \$22,100.00 of the capital stock of said Johnson Properties Inc. to the defendant, Johnson Products Company, Inc. The interest on said mortgage is payable at the rate of 8% per annum which is illegal.

24. At some time during the past few years the defendant, Johnson Products Company, Inc., purchased with the moneys of the said company an automobile costing approximately \$1,500.00 and gave the said automobile to the defendant, Edward Horwitz. The said defendant does not use the said automobile in connection with the business of said company in any way whatsoever, but uses it solely for his own personal use. The said Johnson Products Company, Inc. pays a large part of the expenses incurred by the defendant, Edward Horwitz, in connection with the use of said automobile, such as for oil, gasoline, repairs, etc.

25. The defendant, Charles J. Johnson, is also conducting a business under the trade name of Plastic Waste Company. The entire business of the said defendant, Charles J. Johnson, trading as Plastic Waste Company, consists in purchasing the products of the defendant Johnson Products Company, Inc. and reselling them at a substantial profit to himself, thus depriving the Johnson Products Company, Inc. of profits to which it is entitled.

26. The defendant, Johnson Products Company, Inc. is doing a large volume of business

at the present time, but because of the grossly excessive salaries paid to the defendants as aforesaid and because of the fraudulent dissipation of the moneys and assets of the said company, and because of the inefficiency and fraud in the conduct and management of the business of said company and in the keeping of the books and records of said company, the said company has failed to show a profit during the years 1925 and 1926 and has failed to pay any dividends during those years as above mentioned.

27. The business of said company has been and is being conducted at a great loss and greatly prejudicial to the interest of its stockholders.

28. At the time complainants were induced to purchase stock of the company as aforesaid, the defendant Charles J. Johnson, promised the complainants that they would be made directors of the said company. Said promise was never earned out although it was within the power of the defendant, Charles J. Johnson, to do so as he always owned a controlling interest in the capital stock of the said company. The said defendant, Charles J. Johnson, and the other defendants named above, have always refused to disclose to the complainants any information regarding the affairs of said company and have at all times wholly failed and neglected to recognize any obligation towards the complainants and the other stockholders of said company and treated all requests by complainants and other stockholders for information regarding the affairs of the company with the utmost contempt.

SECOND CAUSE OF ACTION.

Complainants repeat paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the first cause of action.

THIRD CAUSE OF ACTION.

Complainants repeat paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 20 of the first cause of action.

The defendant, Pauline Johnson, used the said sum of \$28,531.70 so paid her as aforesaid or a large part thereof in the purchase of lands and premises now owned by her situated in the city of Newark, County of Essex and State of New Jersey and more particular bounded and described as follows:

“Beginning at a point in the southerly line of Goldsmith Avenue 106.06 feet from the intersection of the westerly line of Elizabeth Avenue with the southerly line of Goldsmith Avenue as the same are laid down on the map of the property of the Weequahic Park Land & Improvement Company, revised in 1909 by George E. Gardner, surveyor, revised in 1920 by George H. Gardner, surveyor, thence running Westerly along the southerly line of Goldsmith Avenue 56.05 feet; thence running Southerly at right angles to Goldsmith Avenue 100 feet; thence running Easterly and parallel with Goldsmith Avenue 50 feet; thence running North-erly and parallel with Elizabeth Avenue 100.18 feet to the point and place of Beginning.”

FOURTH CAUSE OF ACTION.

Complainants repeat paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, and 22 of the first cause of action.

Complainants are without adequate remedy in the courts of law and therefore pray:

1. That the defendants, Johnson Products Company, Inc., Johnson Properties, Inc., Charles

J. Johnson, Horace C. Johnson, Jr., Frank E. Johnson, Pauline Johnson, Edward Horwitz and Charles J. Johnson, trading as Plastic Waste Company, who are the defendants in this suit may answer this bill of complaint and each statement therein made.

2. That this Court may appoint a receiver to take over the conduct and management of the business of the defendant, Johnson Products Company, Inc., for the protection of the complainants and the other stockholders of the said company.

3. That an injunction may issue to restrain the said company and its officers and agents from exercising any of its privileges and franchises and from collecting or receiving any debts or paying out, sell, assign or transferring any of its assets, moneys, funds, lands, tenements or effects, except to the receiver appointed by this court, until this court shall otherwise order.

4. That it may be ORDERED, ADJUDGED and DECREED That the salaries paid to the defendants, Charles J. Johnson, Horace C. Johnson, Jr., Frank E. Johnson, and Edward Horwitz, are and have been grossly excessive and unreasonable, and that the said defendants may be ordered to account for the respective amounts which may be found by this Court to have been paid to each of them respectively in excess of the reasonable value of their services respectively since the beginning of the existence of said company, and that the said defendants may be ordered to pay said amounts to the Receiver or such other person as may be designated by this Court.

5. That the defendant, Charles J. Johnson, may be enjoined and restrained from continuing to do business as the Plastic Waste Company, and that he may be ordered to account for all of

the profits gained by him in the conduct of this business, and to pay over said profits to the said Receiver or such other person as may be designated by this Court.

6. That the defendant, Pauline Johnson, may be ORDERED, ADJUDGED and DECREED to hold the said sum of \$28,531.70 so paid to her as above mentioned, in trust for the benefit of the complainants and of the stockholders of the defendant, Johnson Products Company, Inc., and that the said defendants, Pauline Johnson may be ordered to pay to the Receiver appointed by this Court or to such other person as may be designated by this Court, the said sum of \$28,531.70 with interest thereon from the time of payment thereof to her.

7. That the mortgage for \$40,000.00 given by the defendant, Johnson Products Company, Inc. to the defendant, Johnson Properties, Inc., may be ORDERED, ADJUDGED and DECREED to be absolutely void and of no effects, and that the lands and premises of the defendant, Johnson Products Company, Inc., covered by this mortgage may be adjudged discharged from the lien thereof.

8. That the lands and premises above described owned by the defendant, Pauline Johnson, and situated in the City of Newark, may be ORDERED, ADJUDGED and DECREED to be held by the said defendant, Pauline Johnson, in trust for the complainants and the other stockholders of the defendant, Johnson Products Company, Inc., and that the defendants, Pauline Johnson and Charles J. Johnson, her husband, may be ordered to execute a deed of conveyance for said premises to the said Receiver or such other person as may be designated by this Court, to hold said premises in trust for the complainants and other stockholders of said company.

9. That the complainants may have such other and further relief as may be equitable and just in the premises.

10. That a writ of subpoena may issue commanding the said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

J. GLENN ANDERSON,
Solicitor for and of Counsel with Complainants.

EXHIBIT B.

IN CHANCERY OF NEW JERSEY.

Between

PETER EELMAN, trading as
Eelman & Co.,

*Complainant,**and*

JOHNSON PRODUCTS, INC., a
corporation,

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

This matter being opened to the Court by William Harris, solicitor for the receiver of the above named defendant corporation, and upon reading and filing the duly verified petition of James H. Phillips, the receiver of the above named defendant company praying that he may have the advice and direction of this Court as to whether the lands, premises, machinery, appurtenances and merchandise, together with the other property described in said petition for sale, should be sold at public sale for the best price to be obtained therefor, and due cause being shown for the granting of this order, it is on this 29th day of August, 1927,

ORDERED, ADJUDGED and DECREED that the Citizens Title Insurance & Mortgage Company of Passaic, Johnson Properties, Inc., the creditors and stockholders of the defendant corporation, and all other persons having interest in this matter show cause before the Chancellor, at the Chancery Chambers, Prudential Building, Broad Street, Newark, on Friday, Sept. 2, 1927, at ten o'clock in the forenoon, or as soon thereafter

as counsel may be heard, why the receiver should not be authorized, empowered and directed to sell all the assets of the defendant corporation consisting of a certain parcel or tract of real estate, mentioned in said petition and therein described as follows:—

All that lot, piece or parcel of land and premises situate, lying and being in the City of Garfield, described as follows, to wit:

BEGINNING at the corner formed by the intersection of the southerly side of Dewey Street with the easterly side of Cherry Street and running thence (1) southerly along the easterly side of Cherry Street south eleven degrees three and one-half minutes east one hundred seventy five feet; thence (2) north seventy nine degrees, forty nine and one half minutes east one hundred six and seventy eight hundredths feet to a stone monument; thence (3) south eleven degrees thirty six minutes east four hundred twenty three and twenty three hundredths feet to a stone monument; thence (4) south sixteen degrees five minutes east one hundred forty five and five hundredths feet to a stone monument in the lands of the Botany Woolen Company; thence (5) north seventy nine degrees, forty six minutes east ninety nine and ninety hundredths feet; thence (6) north fifteen degrees, fifty six minutes east six hundred and thirty four and fifty hundredths feet to lands of Van Winkle; thence (7) south seventy nine degrees, three minutes west one hundred and eighty five and eight one hundredths feet to a stone monument in the southwesterly corner of Walnut Street; thence (8) along the westerly side of Walnut Street north two degrees fifty minutes west one hundred eighty one and forty nine hundredths feet to a stone monument on the southwesterly corner of Walnut and

Dewey Street; thence (9) along the southerly side of Dewey Street south seventy nine degrees, forty nine and one half minutes west three hundred and fifty and sixty eight hundredths feet to the point and place of BEGINNING. Excepting, however, from the above described premises a parcel conveyed by the said Newark Rubber Company to John Jakubucin *et ux* by deed recorded in Book 1112, page 163 etc., which parcel is described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Cherry Street with the southerly side of Dewey Street, this point being marked by an iron pipe and running thence (1) southerly along the easterly side of Cherry Street one hundred and seventy five feet; thence (2) easterly and at nearly right angles to Cherry Street one hundred six and ninety two hundredths feet to an old stone monument, thence (3) northerly and nearly parallel with Cherry Street fifty two feet; thence (4) easterly and nearly at right angles with the course described under (3) nineteen feet; thence (5) northerly and parallel with the easterly side of Cherry Street one hundred and twenty five feet; thence (6) westerly along the southerly line of Dewey Street as marked by the above described iron pipe and old stone monument at the intersection with Walnut Street one hundred twenty five feet to the point or place of BEGINNING.

together with the machinery and appurtenances thereunto belonging and merchandise therein located, at public or private sale for the best price that same will bring in cash as an entirety or a going concern, or in parcels, at the discretion of the said receiver, and it is further

ORDERED that at said time and place the said Citizens Title Insurance & Mortgage Company

of Passaic show cause why the sale should not be held subject to its mortgage and that said Johnson Properties, Inc., a corporation, show cause why the sale should not be held free and clear of the lien, claim or encumbrance of its mortgage on the real and personal property, the lien of said mortgage to attach to the proceeds derived from the sale, and it is further

ORDERED, ADJUDGED and DECREED that a copy of this order, together with the petition upon which it is based (which may be certified by the solicitor for the complainant) be served upon the said Citizens Title Insurance & Mortgage Company of Passaic and Johnson Properties, Inc., a corporation, within two days from the date hereof, and that a copy of this order (uncertified) be mailed to all known creditors and stockholders of the defendant corporation, which the receiver may be able to ascertain, within two days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

A true copy.

WILLIAM HARRIS,
Of Counsel with Receiver.

Take notice that this matter will be heard in Room 638, Prudential Building, Newark, N. J.

EXHIBIT C.

IN CHANCERY OF NEW JERSEY.

To the Creditors of Johnson Products, Inc, a corporation:

TAKE NOTICE that in pursuance of an order of the Court of Chancery dated the 2nd day of September, 1927, in a cause therein pending wherein Peter Eelman, trading as Eelman & Co., is complainant, and Johnson Products, Inc., a corporation, is defendant, that a sale will be held at public auction of all the assets of said defendant corporation both real estate, personal property and machinery on Friday, September 16, 1927, at the hour of 11:00 in the forenoon (Daylight Savings Time).

Said sale will be conducted at the premises of the plant known as Foot of Schley Street, Garfield, N. J.

The premises are open for inspection between the hours of 9:00 a. m. and 6:00 p. m., and may be inspected by any prospective bidder.

The property will be sold first in bulk as an entirety and then in single lots and which ever way the property will bring the highest and best price same will be struck off to the highest bidder or bidders therefor as the case may be. Twenty-five (25%) percent of the purchase money in cash or certified check acceptable to the receiver will be required to be paid by the successful bidder or bidders.

The sale will be reported by the receiver to the Chancellor at the Chancery Chambers, Room 638, Prudential Building, Broad Street, Newark, N. J., on Saturday, September 17, 1927, at 10.30 a. m. (Daylight Savings Time) or as soon thereafter as the Court can attend to the same, and

if the sale is confirmed, purchaser or purchasers will be required to attend at the office of William Harris, of counsel with the receiver, 790 Broad Street, Newark, N. J., on Monday, September 19, 1927, at 11:00 in the forenoon, to pay the balance of the purchase money and receive bills of sale, deeds or other instruments.

Further conditions will be made known on the day of sale.

Dated—September 2, 1927.

JAMES H. PHILLIPS, Esq.,
Receiver,
115 Clifton Ave., Newark, N. J.

WILLIAM HARRIS, Esq.,
Counsel with Receiver,
790 Broad Street, Newark, N. J.

