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**Notice of Appeal.**

(Filed June 11, 1930)

IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill &c.  
Notice of  
Appeal

10

Take Notice that Lillian E. Hofman, the hold-  
er of two mortgages on certain premises owned  
by the defendant corporation, and a creditor of  
the defendant corporation, hereby appeals from  
the orders of the Chancellor made on the 29th  
day of April, 1930, and the 3rd day of June,  
1930, on the advice of Honorable Alonzo Church,  
Vice-Chancellor, and from the whole and every  
part thereof, to the Court of Errors and Ap-  
peals, the last resort in all causes.

20

Dated, June 6th, 1930.

30

PHILIP SHERMAN,  
Solicitor for Lillian E. Hofman.

JEROME C. EISENBERG,  
Of Counsel.

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

JEROME C. EISENBERG,  
Of Counsel with Defendant, Lillian  
E. Hofman.

40

Service of a true copy of the within Notice  
is acknowledged 9th day of June, 1930.

BENJ. SHANEFIELD,  
Solicitor of Receiver.

**Petition of Appeal.**

(Filed June 28, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10 \_\_\_\_\_

Between:	}	On Appeal. Petition of Appeal.
SAUL NEEDLE,		
Complainant,		
and		
PERFECTION CONSTRUCTION Co.,		
Defendant.		

\_\_\_\_\_

20 The petition of Lillian E. Hofman, the appellant in the above entitled cause, respectfully shows:

30 That your petitioner finds herself aggrieved by three orders made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Honorable Alonzo Church, Vice-Chancellor, bearing date of April 29, 1930, and two interlocutory orders bearing dates of June 3, 1930, in a certain cause in the said Court of Chancery wherein Saul Needle is complainant, and the Perfection Construction Co., a corporation, is defendant, in the following respects:

1. That the Court of Chancery erred in an order made on April 29, 1930, in appointing Albert G. de Ronde statutory receiver of the Perfection Construction Co., in that:
  - 40 (a) That the Court of Chancery was without

*Petition of Appeal*

jurisdiction to make the said order of April 29, 1930, in that on March 28, 1930, the Court of Chancery by the Honorable Alonzo Church advised an Order to Show Cause returnable April 8, 1930, which, among other things recited as follows:

10

**“ORDERED,** That the Perfection Construction Co., a corporation, show cause before the Chancellor at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on the 8th day of April, 1930, at ten o'clock, in the forenoon, or as soon thereafter as counsel may be heard, why an injunction should not issue according to the prayer of the Bill of Complaint, and why a receiver should not be appointed for the Perfection Construction Co., a corporation, in accordance with the statute in such case made and provided.”

20

That the said Order to Show Cause further provided:

**“ORDERED:** That until the Order to Show Cause herein shall be made absolute or discharged, the said Perfection Construction Co., its officers, servants or agents, absolutely desist and refrain and they are hereby enjoined and restrained from contracting any debts or collecting and receiving any moneys due and owing to the defendant corporation, or selling, assigning, setting over or transferring any of the effects, property and estate of the corporation.”

30

40

*Petition of Appeal*

And that the said Order to Show Cause further provided:

10           “**ORDERED:** That Albert G. de Ronde be and he hereby is appointed custodial receiver for the stockholders and creditors of the said corporation to take into his possession the assets of the defendant corporation and to hold same until the further order of this Court.”

And that the said Order to Show Cause further provided:

20           “**ORDERED:** That a true copy of the within order, which shall be certified, by complainant’s solicitor, together with a copy of the bill of complaint and the affidavit annexed thereto, be served upon the defendant corporation by serving its officers at their respective home addresses or upon its registered agent on the day of the date hereof.”

30           That no copy of said Order to Show Cause was sent or served on the stockholders and creditors of the corporation.

(b) That no compliance was made with rule 111a of the Court of Chancery, which provides as follows:

40           “No receiver shall be appointed for any corporation, partnership or individual under the general equity power of this court, commonly called an ‘equity’ or ‘custodian’ receiver, in any suit, nor shall any order of decree for a preliminary injunction

*Petition of Appeal*

be issued, or any temporary restraining order be granted therein, without notice to, or the consent of the defendant, unless it shall clearly appear from the duly verified facts that immediate and irreparable injury will result before notice can be served and a hearing had therein; and no receiver shall be appointed for an insolvent corporation under power conferred upon this court by the statute, without notice to, and an opportunity to be heard by, the defendant." 10

(c) That no compliance was made with rule 111b of the Court of Chancery, which provides as follows: 20

"If an 'equity' or 'custodial' receiver be appointed for the corporation, partnership or individual, without notice, there shall be an order addressed to the stockholders and creditors of the corporation, or to the creditors of the partnership or individual, as the case may be, to show cause why the receiver and receivership should not be continued or made permanent." 30

(d) That the said Order to Show Cause dated March 28, 1930, and the making of the order of April 29, 1930, was in violation of Rule 111c, which provides as follows:

"Every order or decree for a preliminary injunction or containing any temporary restraint, or appointing an 'equity' or 'custodial' receiver made without notice 40

*Petition of Appeal*

10 in any such suit, shall state the courts finding of fact as to why the injury is immediate and irreparable, and such order or decree shall by its terms expire within such time, not to exceed seven days, as the court may fix, unless within the time so fixed the order or decree shall for good cause shown, be extended not to exceed a like period, and the reason for such extension shall be stated in the extending order or decree.”

20 That the said Order to Show Cause did not set forth the Court's finding of fact as to why the injury is immediate and irreparable, and the said order by its terms, expired more than seven days from its date, in violation of the aforesaid rule.

30 (e) That in violation of law and in deprivation of a vested property right of the stockholders of the said company, the Court of Chancery made said order of April 29, 1930, without notice, in conformity with Rule 111b, being sent to the stockholders and creditors, to show cause why the receiver and receivership should not be continued and made permanent. That the failure so to do and the eventual appointment of a statutory receiver, in pursuance of said Order to Show Cause, constituted a violation of law and a confiscation of a vested property right of the stockholders of the Company.

40 (f) That the making of the order of April 29, 1930, was in violation of the 14th amendment of the United States Constitution, in that it con-

*Petition of Appeal*

fiscated a vested property right of the stockholders of the Company, without due process of law.

(g) That the Bill of Complaint filed in behalf of the complainant, did not set forth sufficient facts to warrant the court to appoint a custodial receiver, and the eventual appointment of a statutory receiver on April 29, 1930. 10

(h) That all the proceedings had under and by virtue of the said Order to Show Cause dated March 28, 1930, and the making of the order of April 29, 1930, and the proceedings had thereunder, as well as all action taken in pursuance thereof, was nugatory and were of no force and legal effect. 20

(i) That the following findings in the said order of April 29, 1930:

“and it appearing that the corporation is insolvent and cannot meet its matured and maturing obligations and cannot carry on its affairs with safety to the public and advantage to the stockholders and creditors, and due cause being shown for the granting of this order” 30

were unjustified, illegal and improper and not supported by evidence.

(j) That all the proceedings had under and by virtue of the Order to Show Cause dated March 28, 1930, and in pursuance thereof, were illegal, improper and in violation of law, in that no notice was given to stockholders and creditors as provided for by law. 40

*Petition of Appeal*

(k) That the injunctive mandate and restraint imposed under said order of April 29, 1930, were unwarranted, and unjustified in equity and law.

10 (l) That all of the injunctive mandates and restraints imposed under said order of April 29, 1930, were not justified under the evidence submitted and the proofs taken by the Court.

20 (m) That the appointment of a receiver without affording the appellant and the stockholders of the company an opportunity to be heard, was taking property without due process of law and that Section 65 of the General Corporation Act, Chapter 185, Laws of 1896, page 67, in permitting same to be done, if in fact said Act permits such procedure, is in violation of the Federal Constitution.

30 (n) That the appointment of a receiver, without affording the appellant and the stockholders of the company an opportunity to be heard, was taking property without due process of law and that Section 65 of the General Corporation Act, Chapter 185, Laws of 1896, page 67, in permitting same to be done, if in fact said Act permits such procedure, is in violation of the Constitution of the State of New Jersey.

40 2. That the Court of Chancery erred in making the order of June 3, 1930, directing Albert G. de Ronde, the receiver of the Perfection Construction Co., to sell the lands and premises of the defendant company, located in the Township of Livingston, County of Essex, and State of New Jersey, more particularly described in the

*Petition of Appeal*

said order, free, clear and discharged of and from the lien claims and other encumbrances existing against the said land and building in this respect, to wit:

(a) That the Court of Chancery erred in directing the said Albert G. de Ronde, receiver, to sell the lands and premises described in the aforesaid order, free, clear and discharged of and from lien of a mortgage in the sum of \$2,500 held by the petitioner upon the said lands and premises. 10

(b) That the Court of Chancery erred in directing the said Albert G. de Ronde, receiver, to sell the lands and premises described in the aforesaid order, free, clear and discharged of and from a mortgage in the sum of \$5,500 held by the petitioner upon the said lands and premises. 20

(c) That the Court of Chancery erred on the proofs before it in finding that the mechanic lien creditors and the mortgagees have respectively questioned the extent, validity and priority of each of the other liens and/or mortgages covering the said premises. 30

(d) That the Court of Chancery erred on the proofs before it in finding that the property described in the said order is of a character materially to depreciate in value pending the termination of the litigation respecting the extent, validity and priorities of said liens and mortgages.

(e) That the Court of Chancery had no jurisdiction, power and authority on the proofs be- 40

*Petition of Appeal*

fore it to order a sale of the property free, clear and discharged of and from all liens and encumbrances existing against it.

10 (f) That the Court of Chancery had no jurisdiction, power and authority to order said property sold by Albert G. de Ronde, because the said receiver was appointed under an order of March 28, 1930, without notice to the petitioner as a creditor of the defendant company.

3. That the Court of Chancery erred in making an order of June 3, 1930, which provided as follows:

20 "This matter being opened to the Court by Philip Sherman, Solicitor of Lillian E. Hoffman, in the presence of Benjamin Shanefield, Solicitor of Albert G. De Ronde, receiver of Perfection Construction Co., and it appearing to the Court that Lillian E. Hoffman is the holder of two mortgages covering certain premises in the Township of Livingston, in the County of Essex and State of New Jersey,  
30 as is more particularly described in the petition filed herein, and that the said Lillian E. Hoffman is desirous of foreclosing said mortgages, and joining as party defendant in such foreclosure the said Albert G. De Ronde, receiver as aforesaid, as is more particularly set forth in said petition,

40 It is, on the 3rd day of June, 1930, ORDERED, that the prayer of said petition be and the same hereby is denied"

*Petition of Appeal*

in the following respects:

(a) The Court of Chancery had no jurisdiction, power and authority on the proofs before it to deny the petitioner the right to foreclose the mortgages held by the petitioner on the premises belonging to the defendant corporation. 10

(b) That the Court of Chancery had no jurisdiction, power and authority on the proofs before it to deny the petitioner the right to join Albert G. De Ronde, the receiver, as a party defendant in the aforesaid foreclosure suit.

Petitioner therefore prays that the said orders of the said Chancellor, and all of the proceedings had in connection therewith may be reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Honorable Court shall deem proper. 20

PHILIP SHERMAN,  
Solicitor of Lillian E. Hofman,  
Petitioner.

JEROME C. EISENBERG, 30  
Of Counsel.

**Bill of Complaint.**

(Filed March 28, 1930.)

IN CHANCERY OF NEW JERSEY.

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

Complainant, Saul Needle, residing at Jackson Heights, Long Island for and on behalf of himself, and all other creditors and stockholders of the Perfection Construction Co., a corporation, the defendant, shows that:

20 1. Complainant is a judgment creditor of the defendant corporation. There is due on complainant's judgment the sum of \$150.00, besides costs of suit.

2. The defendant was incorporated under the laws of the State of New Jersey, under and by virtue of an Act entitled "An Act Concerning Corporations, (revision of 1896)," and the several acts amendatory thereof and supplemental thereof.

30 3. The defendant was organized to engage in the business of building and selling real estate and real property.

4. Complainant does not know the names of the officers of the defendant corporation, except that complainant is informed that Charles G. Hoffman of #239 Walnut St., Bogota, New Jersey, is the President and General Manager of the said corporation.

40 5. Complainant shows upon information and belief that the defendant corporation has sus-

*Bill of Complaint*

pended its business within the meaning of Section 65 of the Corporation Act of the State of New Jersey in that it has not available assets or sufficient credit to conduct its business in the manner heretofore, and cannot at the present time, nor will it within a short time, be able to conduct its business with safety to the public and advantage to its stockholders. 10

6. Complainant further shows that defendant has no cash on hand, nor has it any credit and that the various creditors of the defendant are pressing for payment; that some of the creditors have already instituted suits and others are about to institute suit to enforce payment of the sums due them, and the defendant is without means to pay or satisfy the respective demands of this complainant or of its various creditors. 20

7. Complainant further shows that the assets of the defendant consist of a parcel of land situated in the Township of Livingston, County of Essex and State of New Jersey, and more particularly described as follows: 30

Being known and designated as Lot #11 in Block N on a map filed, entitled "Map of Fanner Park, Livingston, N. J." surveyed by Freeman & Winston, Surveyors, West Orange, N. J.

The said land has erected thereon, a two-story brick apartment with three stores on the ground floor and two apartments on the second floor. 40

8. Complainant is informed and verily believes

*Bill of Complaint*

that there are one or more tenants now in occupancy in the said premises.

9. There are two mortgages on record against the said property, as follows:

10 To:

Fenner Sales Co., dated June 20th, 1929, in the amount of \$2,500.00.

Lillian E. Hoffman, dated June 20th, 1929, in the amount of \$5,500.00.

Lillian E. Hoffman is the wife of Charles G. Hoffman, the President and General Manager of the defendant corporation.

20 10. Complainant does not know the value of said land and real estate, but complainant has been informed that the buildings above described are built over the right of defendant's land and for that reason the defendant has been unable to obtain a further mortgage on the said property.

30 11. Complainant further shows that he instituted suit in the First District Court of the City of Newark, against the defendant for the sum of \$310.00 in November, 1929; that thereafter the defendant called at the office of complainant's attorney and delivered post dated checks for the full amount due. Five of the said checks thereafter were returned by defendant's bank marked "Insufficient Funds," and complainant was forced to proceed to judgment on the balance due your complainant.

40 12. Complainant further shows that the following Mechanics Liens have been filed against the

*Bill of Complaint*

defendant, none of which the defendant is able to pay:

In favor of	Dated	Book	
Saul Needle, Trading as Millburn Electric Co.	Oct. 21, 1929	M. L. 27, 245	10
Ramig Mfg. Co. Caldwell Bldrs. Sup. Co.	Oct. 23, 1929	M. L. 27, 250	
Essex Metal Ceiling Co.	Nov. 2, 1929	M. L. 27, 278	
	Nov. 22, 1929	M. L. 27, 357	

13. Complainant further shows that he has, through his solicitor, on numerous occasions requested the payment of the defendant corporation of the amount due him, but the defendant through Charles G. Hoffman has informed complainant that the defendant corporation has no assets with which to pay complainant the moneys due him. 20

14. Complainant further shows that unless the assets of the defendant corporation are properly marshalled by a receiver to be appointed by this court, the building before referred to, will be greatly deteriorated and depreciated in value and the said corporation will be subject to costly and vexatious litigation; that in the event of a forced sale, its property will bring much less than its fair and reasonable value, all of which would be to the great detriment of the complaint, and the stockholders, and other creditors of the defendant, and complainant believes that unless this Court, in view of the inability of the said defendant to meet is due and matur- 40

*Bill of Complaint*

ing obligations, will deal with its property as a single trust fund, the property will be dissipated to such an extent that its stockholders will realize little or nothing from their holdings, and in all probability, creditors will be unable to collect their claims or a substantial part thereof, against the said defendant corporation, and that the intervention of this Court is necessary for the protection of the creditors of the defendant herein.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That the said defendant corporation may answer this bill of complaint and each statement herein made.

2. That the said defendant corporation may be enjoined from receiving any debts due it and from paying and transferring any of its business, assets or effects and from continuing its business.

3. That the said defendant corporation may be decreed to be insolvent.

4. That the said defendant corporation may be decreed to have suspended its ordinary business for want of funds to carry on the same and that it may be decreed that the said business is not being and cannot be conducted with safety to the public and advantage to its creditors and stockholders.

5. That a receiver be appointed according to the form of the statute in such case made and provided.

*Bill of Complaint*

6. That the assets of the said defendant corporation be marshalled and dealt with as a single trust fund under the supervision and control of this Court.

7. That the State's writ of injunction may issue out of and under the seal of this Honorable Court, directed to the said defendant corporation, its officers, servants and agents enjoining and restraining them and each of them from collecting or receiving any debts due to said company and from exercising any of the privileges and franchises of the said corporation, and from paying out, selling, assigning or transferring any of its assets, money, funds, lands, tenements, hereditaments or effects of the said defendant company. 10  
20

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

9. That the complaint may have such further and other relief as may be equitable and just. 30

BENJAMIN SHANEFIELD,  
Solicitor for and of Counsel with  
Complainant.

STATE OF NEW JERSEY }  
COUNTY OF ESSEX } SS:

Saul Needle, being duly sworn according to law, upon his oath, deposes and says:

1. I am the complainant in the foregoing complaint mentioned. 40

*Bill of Complaint*

2. I am a creditor of the defendant, on a judgment. There is due on my judgment, the sum of \$150.00, besides costs of suit.

10 3. The defendant was incorporated under the laws of the State of New Jersey, under and by virtue of an Act entitled "An Act Concerning Corporations (revision of 1896)," and the several acts amendatory thereof and supplemental thereto.

4. The defendant corporation was organized to engage in the business of building and selling real estate and real property.

20 5. I do not know the names of the officers of the defendant corporation, except that I am informed that Charles G. Hoffman of #239 Walnut St., Bogota, New Jersey, is the President and General Manager of the said corporation.

30 6. I know upon information and belief that the defendant corporation has suspended its business within the meaning of Section 65 of the Corporation Act of the State of New Jersey in that it has not available assets or sufficient credit to conduct its business in the manner heretofore, and cannot at the present time, nor will within a short time, be able to conduct its business with safety to the public and advantage to its stockholders.

40 7. I further show that defendant has no cash on hand, nor has it any credit and that the various creditors of the defendant corporation are pressing for payment; that some of the creditors have already instituted suits and others

*Bill of Complaint*

are about to institute suit to enforce payment of the sums due them, and the defendant is without means to pay or satisfy the respective demands of this complainant, or of its various creditors.

8. I further show that the assets of the defendant consist of a parcel of land situated in the Township of Livingston, County of Essex and State of New Jersey, and more particularly described as follows:

BEING known and designated as Lot #11 in Block N on a map filed, entitled "Map of Fenner Park, Livingston, N. J."

The said land has erected thereon, a two-story brick apartment with three stores on the ground floor and two apartments on the second floor.

9. Complainant is informed and verily believes that there are one or more tenants now in occupancy in the said premises.

10. There are two mortgages on record against the said property, as follows:

To:

Fenner Sales Co., dated June 20th, 1929, in the amount of \$2,500.00.

Lillian E. Hoffman, dated June 20th, 1929, in the amount of \$5,500.00.

Lillian E. Hoffman is the wife of Charles G. Hoffman, the President and General Manager of the defendant corporation.

11. I do not know the value of said land and

*Bill of Complaint*

real estate, but I have been informed that the buildings above described are built over the right of defendant's land and for that reason the defendant has been unable to obtain a further mortgage on the said property.

10

12. I further show that I instituted suit in the First District Court of the City of New-ark, against the defendant for the sum of \$310.00 in November, 1929; that thereafter the defendant called at the office of my attorney, and delivered post dated checks for the full amount due. Five of the said checks thereafter were returned by defendant's bank marked "Insufficient Funds," and I was forced to proceed to judgment on the balance due me.

20

13. The following Mechanics Liens have been commenced against the defendant, none of which the defendant is able to pay:

	In favor of	Dated	Book
	Saul Needle, Trading as Millburn Electric Co.	Oct. 21, 1929	M. L. 27, 245
30	Ramig Mfg. Co. Caldwell Bldrs. Sup. Co.	Oct. 23, 1929 Nov. 2, 1929	M. L. 27, 250 M. L. 27, 278
	Essex Metal Ceiling Co.	Nov. 22, 1929	M. L. 27, 357

14. I have, through my solicitor, on numerous occasions, requested the payment of the defendant corporation of the amount due me, but the defendant through Charles G. Hoffman has informed me that the defendant corporation has

40

*Bill of Complaint*

no assets with which to pay me the moneys due me.

15. I know that unless the assets of the defendant corporation are properly marshalled by a receiver to be appointed by this court, the building before referred to, will be greatly deteriorated and depreciated in value and the said corporation will be subject to costly and vexatious litigation; that in the event of a forced sale, its property will bring much less than its fair and reasonable value, all of which would be to my great detriment, and the stockholders, and other creditors of the defendant, and I believe that unless this Court, in view of the inability of the said defendant to meet its due and maturing obligation, will deal with its property as a single trust fund, the property will be dissipated to such an extent that its stockholders will realize little or nothing from their holdings, and in all probability, creditors will be unable to collect their claims or a substantial part thereof, against the said defendant corporation, and that the intervention of this Court is necessary for the protection of the creditors of the defendant herein.

SAUL NEEDLE.

Sworn to and subscribed before  
me this 25th day of March, 1930.

Harry Federbush,  
An Attorney at Law of New Jersey.

**Order to Show Cause.**

(Filed March 28, 1930.)

## IN CHANCERY OF NEW JERSEY.

10) Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill, etc.

Order to Show  
Cause Why an  
Injunction  
Should Not Issue  
and Receiver be  
Appointed.

20

This matter being opened to the Court by Benjamin Shanefield, Solicitor for and of Counsel with the complainant, whereupon and upon reading and filing the Bill of Complaint and the Affidavit annexed thereto and the Court being satisfied of the sufficiency of the application being made in this cause, it is on this 28th day of March, 1930, on motion of Benjamin Shanefield, Solicitor as aforesaid,

30

ORDERED, that the Perfection Construction Co., a corporation, show cause before the Chancellor at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on the 8th day of April, 1930, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, why an injunction should not issue according to the prayer of the Bill of Complaint, and why a Receiver should not be appointed for the Perfection Construction Co., a corporation, in accordance with the statute in such case made and provided; and it is further

40

ORDERED, that until the order to show cause herein shall be made absolute or discharged, the

*Order to Show Cause*

said Perfection Construction Co., its officers, servants or agents, absolutely desist and refrain and they are hereby enjoined and restrained from contracting any debts or collecting and receiving any moneys due and owing to the defendant corporation, or selling, assigning, setting over or transferring any of the effects, property and estate of the corporation, and it is further

10

ORDERED: That Albert G. De Ronde be and he hereby is appointed custodial receiver for the stockholders and creditors of the said corporation to take into his possession the assets of the defendant corporation and to hold same until the further order of this Court; and it is further

20

ORDERED: That the said receiver, before he shall enter his duties as such receiver, shall take the oath prescribed by law and give a bond to the Chancellor of the State of New Jersey, in the sum of \$2,000 00/100 conditioned for the faithful performance of his duties, and the said bond to be approved as to form and security thereof by Roy F. Anthony, the Special Master of this Court; and it is further

30

ORDERED: That a true copy of the within order which shall be certified, by complainant's solicitor, together with a copy of the bill of complaint and the affidavit annexed thereto, be served upon the defendant corporation by serving its officers at their respective home addresses or upon its registered agent on the day of the date hereof.

E. R. WALKER,  
C.

40

Respectfully advised.

Alonzo Church,

V. C.

**Affidavit of Receiver.**

(Filed March 29, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill, &c.  
AFFIDA-  
VIT.

20

STATE OF NEW JERSEY } SS:  
COUNTY OF ESSEX }

Albert G. de Ronde, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Custodial Receiver appointed by this Court in the above entitled matter on March 28th, 1930. I reside in the Township of Livingston, County of Essex and State of New Jersey, and I am familiar with the land and building owned by the defendant company herein.

2. The building is vacant and has been vacant for some time. The building consists of three stores downstairs and two apartments on the second floor. I know of only one tenant ever being in occupancy of the said premises, a Dry Goods Store which did not stay in the building very long. The building is not entirely completed and one plate glass window in the middle store is broken.

*Affidavit of Receiver*

3. I have not yet procured the keys to the building and therefore have been unable to go through the building. I saw a pump near the cellar window in the front of the building, with a rubber hose leading into the cellar, which would indicate that the cellar is full of water. 10

4. I am informed and state, on information and belief that the said building is erected over the line of the defendant's property.

ALBERT G. DERONDE.

Sworn to and subscribed before  
me this 29th day of March, 1930.  
Harry A. Sosnow,  
An Attorney at Law of New Jersey. 20

30

40

**Notice for Order to Vacate.**

(Filed May 2, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

} On Bill, &c.  
} NOTICE.20 To: BENJAMIN SHANEFIELD, Solicitor for  
Complainant:

PLEASE TAKE NOTICE that on the 8th day of April, 1930, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at Chancery Chambers, in the City of Newark, I shall apply to the Chancellor for an order vacating the order made on March 28, 1930, appointing Albert G. DeRonde custodial receiver for the above named defendant company, for the following reasons:

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1. The said Bill of Complaint does not disclose any facts to warrant the appointment of a custodial receiver.

2. The said order does not set forth the Court's findings of fact as to why the injury is immediate and irreparable, and the said order by its terms, expires within eleven days from the date thereof, in violation of Rule 111 C of the Rules of the Court of Chancery of New Jersey.

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ISADORE GLAUBERMAN,  
Solicitor of Defendant, Perfection  
Construction Co.

**Order Extending Restraint.**

(Filed April 3, 1930.)

IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,  
andPERFECTION CONSTRUCTION Co.,  
a corporation,  
Defendant.

10

On Bill, &c.  
Order Ex-  
tending  
Restraint.

This matter being opened to the Court by Benjamin Shanefield, Solicitor for and of counsel with Complainant, and it being shown to the Court that on the 28th day of March, 1930, a Restraint was granted against the defendant, Perfection Construction Co., according to the prayer of the bill of complaint filed herein, and it further appearing that a Custodial Receiver was appointed on said date to take into his possession, the assets of the defendant corporation, and to hold same until the further order of this Court, and it further appearing that the said Custodial Receiver entered into his trust and took possession of the assets of the defendant company, and it further appearing that the said order was made returnable on the 8th day of April, 1930, and the said restraint according to Rule 111 C of this Court would expire on the 3rd day of April, 1930, and that

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*Order Extending Restraint*

such would vacate the restraint and permit the defendant company to transfer and alienate its assets, property or estate before the final hearing of this matter to the injury of the complainant and all other creditors and stockholders who  
10 may join with him in this suit, it is on this 3rd day of April, 1930,

ORDERED that the said order of restraint granted on March 28th, 1930, be, and the same is hereby continued to April 8th, 1930, with all the restraints set forth in the said order.

E. R. WALKER,  
C.

20 Respectfully Advised.  
Alonzo Church,  
V. C.

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**Order of Continuance.**

(Filed April 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

10

On Bill, &c.  
Order of  
Continuance.

This matter being opened to the court by  
Benjamin Shanefield, Solicitor for complainant,  
and Solicitor for defendant consenting hereto,

20

It is on this 8th day of April, 1930, ORDERED  
that hearing on order to show cause why perma-  
nent receiver of defendant herein should not be  
appointed be continued for two weeks to April  
22, 1930.

E. R. WALKER,

C.

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Respectfully advised,  
Alonzo Church,  
V. C.

I consent to the entry of the above order.

ISADORE GLAUBERMAN,  
Solr. for Defendant.

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**Order of Continuance.**

(Filed April 22, 1930.)

IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill &amp;c.

Order of  
Continuance.

20

This matter coming on to be heard on an Order to Show Cause made on the 28th day of March, 1930, why the Receiver, Albert G. de-Ronde, should not be made permanent which Order to Show Cause was returnable on the 8th day of April, 1930, at Chancery Chambers, Newark, N. J., and which Order to Show Cause was continued until the 22nd day of April, 1930;

30

It is ORDERED that the said order to Show Cause and all the provisions therein contained is hereby continued until the 29th day of April, 1930.

E. R. WALKER,

C.

Respectfully advised  
Alonzo Church,  
V. C.

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We hereby consent to the entry of the above order.

ISADORE GLAUBERMAN,  
Solr. of Defendant.

BENJAMIN SHANEFIELD,  
Solr. of Complainant.

**Affidavit of Charles G. Hoffman.**

(Filed June 3, 1930.)

## IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill &c.  
Affidavit.

10

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } SS:

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Charles G. Hofmann, being duly sworn according to law, upon his oath, deposes and says:

1. That I am the president of the Perfection Construction Co., the defendant herein.

2. That the said company was organized on the 9th day of November, 1928, and I am the principal stockholder having invested in the said company the sum of \$4500.00 in cash.

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3. After said company was organized, it purchased from the Fenner Park Sales Co., a piece of property located in the Township of Livingston, County of Essex, and State of New Jersey for the purpose of building thereon, a two-story brick house with three stores on the ground floor and two apartments on the second floor.

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4. At the time the said property was pur-

*Affidavit of Charles G. Hoffman*

chased, the defendant company was promised from the Newark Mutual Benefit Building and Loan Association, a \$17,000 mortgage on the said property.

10     5. In order to raise funds for the construction of the said apartment, the said defendant company borrowed from Lillian E. Hofmann, the sum of \$5,500, for which it gave a mortgage on the said property.

20     6. After the said property was completed, the said Newark Mutual Benefit Building and Loan Association refused to carry out its commitment in giving the said mortgage. The defendant company then applied to several other banking institutions, but so far has not succeeded in obtaining a mortgage. This resulted in the defendant company being temporarily embarrassed, and though I have invested out of my own private funds, the sum of \$4500.00 to pay some of the creditors, there is still due the sum of \$2,500 to creditors.

30     7. The defendant company's assets are far in excess of its liabilities; while its total obligations, including the mortgages, are about \$10,500, its property is worth, at a conservative estimate, the sum of \$20,000.

8. The complainant, Saul Needle had obtained a judgment for the sum of \$325.00, for which he was paid on account, the sum of \$200.00, and there is now due him the sum of \$125.00.

40     9. I have read the bill of complaint, and I most emphatically deny that the said defendant company has suspended its business. As a

*Affidavit of Charles G. Hoffman*

matter of fact, I have communicated, on behalf of the defendant company, with Max Bernfeld, Inc., of Union City, N. J., who have promised to obtain a mortgage on the said property.

10. I further charge that the suit brought by the said Saul Needle is not brought in good faith for the benefit of the stockholders and creditors of the defendant company, but is only a means of trying to force the defendant to pay him his judgment before it is able to get a mortgage. Said complainant is amply secured with his judgment, as it is a lien on the property. 10

11. The apartments and the stores are now vacant and the defendant company is not receiving any rents, and the appointment of a receiver at this time is only to embarrass the defendant company in its efforts to obtain a mortgage on the property, so that it may be able to pay all the creditors. 20

12. The defendant company is not insolvent, as the property is worth much more than the amount of its mortgages and its debts. The appointment of a receiver for the defendant company, at this time, will do no good, either to the creditors or stockholders of the defendant company, as it will prevent the defendant company from obtaining a mortgage. 30

CHARLES G. HOFFMAN.

Sworn and subscribed to before  
me this 7th day of April, 1930.

Myron F. Levy,  
Notary Public of New Jersey. 40

**Affidavit of Max Rusinow.**

(Filed June 3, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

} On Bill &c.  
} Affidavit.

20

STATE OF NEW JERSEY } SS:  
COUNTY OF ESSEX }

Max Rusinow, of full age being duly sworn upon his oath according to law, deposes and says that:

1. I am a licensed real estate broker and have been engaged as a real estate broker and salesman for the past five years.

30

2. During the past three years, I have been selling a great deal of property in the Township of Livingston, County of Essex, and I am familiar with the value of lots and buildings in the neighborhood of Mt. Pleasant Avenue, Livingston, New Jersey.

40

3. The property of the defendant is located on Mt. Pleasant Avenue, Livingston, New Jersey, and it consists of a two-story brick building, comprised of three stores and two apartments above.

*Affidavit of Max Rusinow*

4. I made an inspection of the said apartment house and in my opinion, at a fair and ordinary sale the property will bring in \$25,000. My figures are based on the fact that the land is worth \$5,000 and the building being new is worth at least \$20,000 making a total valuation of \$25,000. 10

MAX RUSINOW.

Sworn and subscribed to before  
me this 4th day of April, 1930.

Robert E. Dudley,  
Notary Public of New Jersey.

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**Order Appointing Statutory Receiver.**

(Filed May 2, 1930.)

IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill, etc.

Order  
Appointing  
Statutory  
Receiver.

20

This matter being opened to the Court by Benjamin Shanefield, solicitor for and of Counsel with Complainant, and it appearing that heretofore on the 28th day of March, 1930, Albert G. de Ronde was appointed custodial receiver of the said defendant corporation, and the defendant corporation was ordered to show cause on the 8th day of April, 1930, why the custodial receiver heretofore appointed should

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not be continued as statutory receiver, and why it should not be adjudged and decreed that the said defendant corporation is insolvent and cannot carry on its business with safety to the public and advantage to the stockholders and creditors, and why the corporation should not be permanently enjoined from exercising any of its corporate franchises, and upon filing the proof of service in accordance with the aforementioned order, and no one appearing in objection thereto, and it appearing that the cor-

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*Order Appointing Statutory Receiver*

poration is insolvent and cannot meet its matured and maturing obligations and cannot carry on its affairs with safety to the public and advantage to the stockholders and creditors, and due cause being shown for the granting of this order, it is on this 29th day of April, 1930, 10

ORDERED that Albert G. de Ronde of the Township of Livingston, County of Essex, be and he is hereby continued as statutory receiver of said defendant corporation with all the powers and authorities vested by virtue of an act entitled "An Act concerning corporations (Revision of 1896)" the supplements thereto and amendments thereof, and it is further

ORDERED that the bond entered into with the receiver by the Chancellor of the State of New Jersey, in the penal sum of \$2,000.00, be and the same is hereby continued, and it is further 20

ORDERED that the said defendant corporation its officers, servants, agents, and employees be and they are hereby enjoined and restrained from transferring, hypothecating, alienating or disposing of any of the assets of the defendant corporation and from carrying on any of its business affairs or from exercising any of its corporate franchises, and it is further 30

ORDERED, ADJUDGED and DECREED that the said defendant corporation be, and it is hereby declared to be insolvent, and that it cannot meet its matured and maturing obligations, and that it cannot carry on its affairs with safety to the public and advantage to its stockholders and creditors, and it is further 40

ORDERED that the said receiver be, and he is hereby vested with full power and authority to

*Order Appointing Statutory Receiver*

10 demand, sue for, collect, receive and take into his possession, all of the goods, chattels, rights and creditors, money and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and he is vested with all the powers and authorities more specifically set forth in an act entitled "An Act concerning corporations" (Revision of 1896) the supplements thereto and amendments thereof.

E. R. WALKER,

20

C.

Respectfully advised,  
Alonzo Church,  
V. C.

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**Order Amending Order.**

(Filed May 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,  
and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

10

On Bill, &c.  
ORDER.

This matter being opened to the Court by Benjamin Shanefield, Esq., Solicitor for and of counsel with complainant, and it appearing that heretofore on the 29th day of April, 1930, an Order Appointing Statutory Receiver was entered in the above cause, but, inadvertently, the said order provided that no one appeared in objection to the said order, whereas Louis Stein appeared on behalf of Isadore Glauberman, solicitor of the Perfection Construction Co., the defendant herein;

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30

It is, on this 8th day of May, 1930, ORDERED that the allegation contained in the said Order Appointing Statutory Receiver that "no one appearing in objection thereto" be amended to read as follows: "Louis Stein, appearing on behalf of Isadore Glauberman, solicitor for the Perfection Construction Co., the defendant herein and objecting to the appointment of a statutory receiver for the defendant company."

40

E. R. WALKER,

C.

Respectfully advised  
Alonzo Church,  
V. C.

**Notice.**

(Filed April 29, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill &c.  
NOTICE.20 To the Honorable Albert G. de Ronde, Receiver  
of Perfection Construction Co.:

Sir:

Please take notice that on Tuesday, the 22nd day of April, 1930, at 10 o'clock in the forenoon in Chancery Chambers, 1060 Broad Street in the City of Newark, I shall apply to the Chancellor for an order permitting the foreclosure of the mortgage mentioned in the attached petition, against you as receiver as aforesaid.

PHILIP SHERMAN,  
Solicitor of Lillian E. Hoffman.

**Petition to Foreclose.**

(Filed April 29, 1930)

## IN CHANCERY OF NEW JERSEY.

Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

On Bill, &amp;c.

PETITION.

10

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

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The petition of Lillian E. Hoffman, residing  
in the Borough of Bogota, County of Bergen,  
State of New Jersey, respectfully shows that:

1. That she is the holder of two certain bonds  
and mortgages covering premises owned by  
Perfection Construction Co., Township of Liv-  
ingston, County of Essex, New Jersey, which  
property is more particularly described as fol-  
lows:

30

ALL that tract or parcel of land and  
premises hereinafter particularly de-  
scribed, situate, lying and being in the  
Township of Livingston, in the County  
of Essex and State of New Jersey.

Being known and designated as Lot 11  
in Block N on a map filed, entitled "Map  
of Fenner Park, Livingston, N. J.," sur-  
veyed by Freeman & Winston, Surveyors,  
West Orange, N. J.

40

*Petition to Foreclose*

10 2. Said petitioner is a holder of a purchase money mortgage by assignment in the principal sum of \$2,500 which mortgage was originally made to the Fenner Park Sale Co., on the 20th day of June, 1929, in payment of the purchase price of said property.

3. Said petitioner is also the holder of another mortgage in the principal sum of \$5,500 and is dated the 20th day of June, 1929, and recorded in the Register's Office of Hudson County on the 25th day of June, 1929, in book R 67 of mortgages in said County on page 481.

20 4. That the principal amount of both the aforementioned mortgages have been due and payable and that no interest has been paid on account of said mortgages. The petitioner is desirous of instituting foreclosure proceedings in the Court of Chancery of the State of New Jersey.

30 5. On March 28, 1930, an order was made herein appointing Albert G. De Ronde, custodial receiver of the defendant corporation together with an order to show cause why a statutory receiver should not be appointed, which order is returnable on the 8th day of April, 1930, at Chancery Chambers in Newark.

40 Your petitioner therefore prays that the order may be made by this Honorable Court, for leave to file said bill of foreclosure against the Perfection Construction Co. for the purpose above set forth and to join as one of the defendants therein, Albert G. De Ronde, Re-

*Petition to Foreclose*

ceiver as aforesaid, in such foreclosure proceeding.

PHILIP SHERMAN,  
Solicitor of Petitioner.

STATE OF NEW JERSEY } SS: 10  
COUNTY OF HUDSON }

Philip Sherman, of full age, being duly sworn according to law, upon his oath, deposes and says; that he is the Solicitor of the Petitioner herein; that he has read the foregoing petition and the matters and things therein contained are true to the best of his knowledge, information and belief.

PHILIP SHERMAN. 20

Sworn and Subscribed to before  
me this 4th day of April, 1930.

Myron F. Levey,  
Notary Public of New Jersey.

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40

**Affidavit of Service.**

(Filed May 7, 1930.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,

a corporation,

Defendant.

} On Bill, &c.  
} Affidavit of  
} Service.

20

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } SS:

Philip Sherman, of full age, being duly sworn according to law, deposes and says:

1. That he is the solicitor of the complainant herein.

30

2. That on the fourth day of April, 1930, he served a petition and notice, true copies of which are attached here to and made a part hereof.

PHILIP SHERMAN.

Sworn and subscribed to before  
me this 4th day of April, 1930.

Irving Mintz.

Attorney at law of New Jersey.

**Stipulation of Continuance.**

(Filed May 6, 1930.)

IN CHANCERY OF NEW JERSEY.

Between:  SAUL NEEDLE,  <div style="text-align: right; margin-right: 20px;">Complainant,</div> and  PERFECTION CONSTRUCTION Co., <div style="text-align: right; margin-right: 20px;">a corporation,</div> <div style="text-align: right; margin-right: 20px;">Defendant.       </div>	}	On Bill, &c. CONTINU- ANCE.	10
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Philip Sherman, solicitor for Lillian E. Hoffman and Benjamin Shanefield, solicitor of complainant, hereby consent to continue the argument for permission to foreclose certain mortgages in the above matter to Tuesday, May 6th, 1930, or as soon thereafter as counsel can be heard. 20

PHILIP SHERMAN,  
 Solicitor for Lillian E. Hoffman. 30  
 BENJ. SHANEFIELD,  
 Solicitor for Complainant.

**Stipulation of Continuance.**

(Filed May 13, 1930.)

IN CHANCERY OF NEW JERSEY.

10 · Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,  
a corporation,

Defendant.

} On Bill, &c.  
} CONTINU-  
} ANCE.

20

Philip Sherman, solicitor for Lillian E. Hoffman and Benjamin Shanefield, solicitor of complainant, hereby consent to continue the argument for permission to foreclose certain mortgages in the above matter to Tuesday, June 3, 1930, or as soon thereafter as counsel can be heard.

PHILIP SHERMAN,  
Solicitor for Lillian E. Hoffman.

30

BENJ. SHANEFIELD,  
Solicitor for Complainant.

40

**Petition to Sell Free of Liens.**

(Filed April 30, 1930.)

IN CHANCERY OF NEW JERSEY.

Between  SAUL NEEDLE,  <div style="text-align: center;">Complainant,</div> and  PERFECTION CONSTRUCTION Co., <div style="text-align: center;">a corporation,</div> <div style="text-align: center;">Defendant.       </div>	}	On Bill, etc.  PETITION OF RECEIVER TO SELL FREE OF LIENS.	10
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To the Honorable EDWIN ROBERT WALKER, 20  
 Chancellor of the State of New Jersey:

The petition of Albert G. de Ronde, of the Township of Livingston, County of Essex and State of New Jersey, respectfully shows that:

1. On April 29th, 1930, he was appointed receiver for Perfection Construction Co., by order of this court and duly qualified by making an oath and filing a bond as provided by said order. 30

2. The said Perfection Construction Company was engaged in the owning and construction of houses. At the time of your petitioner's appointment, he came into possession, among other things, of said premises situated in the Township of Livingston, County of Essex and State of New Jersey, particularly described as follows:

Being known and designated as Lot #11 40  
 in Block N on a map filed, entitled, "Map of Fenner Park, Livingston, N. J." surveyed by Freeman & Winston, Surveyors, West Orange, N. J.

*Petition to Sell Free of Liens*

There is erected on the said land, a partially constructed brick house, having three stores on the ground floor and two apartments on the second floor.

10     3. On the said tract of land there are two mortgages held by Lillian E. Hoffman, as follows:

1. Mortgage held by Lillian E. Hoffman, in the amount of \$2,500.00, originally made by the Perfection Construction Co., to Fenner Park Sales Co., on June 20th, 1929, and acknowledged on June 20, 1929, before Louis Stein, and recorded in Book C-67 of Mortgages for Essex County, 20     page 535, and assigned by assignment of mortgage of the Fenner Park Sales Co., to Lillian E. Hoffman on June 20th, 1929, which assignment is recorded in Book 208 page 23 of assignments for said county.

2. Mortgage held by Lillian E. Hoffman in the amount of \$5,500.00, made by Perfection Construction Co., to said Lillian E. Hoffman, on the 20th day of June, 1929, and recorded in Book 30     R67 of mortgages for Essex County, page 481.

4. Your petitioner is informed and verily believes that construction work on the building being erected on the said land was commenced before the recording of the above mortgages. Subsequently, a conveyance was made of the premises to the said Perfection Construction Co. and the first of the said mortgages originally held by the Fenner Park Sales Co., was given 40     back as part of the purchase money. It would therefore appear that the persons who are considered as mechanics lien creditors may be entitled to be paid out of the said proceeds from

*Petition to Sell Free of Liens*

the sale of the said land before the holder of the said mortgages shall become entitled to any moneys thereon. The following parties have filed Mechanics Liens:

In favor of	Dated	Book	10
Saul Needle, trading as Millburn Electric Co.	Oct. 21, 1929	M. L. 27, 245	
Ramig Mfg. Co.	Oct. 23, 1929	M. L. 27, 250	
Caldwell Bldrs. Sup. Co.	Nov. 2, 1929	M. L. 27, 278	
Essex Metal Ceiling Co.	Nov. 22, 1929	M. L. 27, 357	

5. The Caldwell Builders Supply Company obtained a judgment on Mechanics Lien in the sum of \$343.67 on April 11th, 1930, generally against the Perfection Construction Co., and especially against the land and building heretofore described with priority over the mortgages held by the defendant, Lillian E. Hoffman. Lillian E. Hoffman claims that her mortgages are prior to the claims of the Mechanic Liens filed against the defendant herein.

20

6. Your petitioner is uncertain as to the validity of the claims of Lillian E. Hoffman as to priority over the Mechanic Lien claims described herein.

30

7. The building being erected on the said premises is not complete. It is open to the elements and the cellar is filled with water. There are open spaces in the rear of the said building and one of the plate glass windows in one of the stores in the said building is broken. If the said building is left in the condition now existing, pending the litigation as to the priority of the liens set forth in this petition, its character is such that it is likely to materially depreciate in value.

40

*Petition to Sell Free of Liens*

Your petitioner therefore prays that this Honorable Court may order the premises described in the foregoing petition to be sold by your petitioner, free and clear of the liens of the mortgagee and mechanics lien creditors mentioned in this petition and free and clear of all other mortgagees and mechanics lien creditors who may hereafter file their claims or appear in these proceedings, and that the liens of such mortgagees and mechanics lien claimants attach to the proceeds of the sale thereof, and that your petitioner may, upon a sale of the said premises, execute and deliver a good and sufficient deed conveying the said premises in fee, to the purchaser thereof, upon the said sale being confirmed by this Court and the receipt by your petitioner of the consideration therefor.

And your petitioner will ever pray, etc.

ALBERT G. DE RONDE,  
Petitioner.

STATE OF NEW JERSEY }  
COUNTY OF ESSEX } SS:

Albert G. de Ronde, being duly sworn on his oath, according to law, deposes and says: that he is the petitioner named in and who subscribed the foregoing petition, that he has read the said petition and knows the contents thereof and that the same is true, except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

ALBERT G. DE RONDE.

Subscribed and sworn to  
before me, this 29th  
day of April, 1930.

Morris J. Oppenheim,  
An Attorney at Law of N. J.



*Order to Show Cause Why Real Estate Should  
Not be Sold*

10 liens, the extent, validity and priority of which are brought into question, and it further appearing from the petition that the property is of such a character likely to materially depreciate in value pending the litigation as to the priorities existing between the said mortgagee and mechanics lien claimants and the extent and validity of such mortgages and mechanics lien claims;

20 And it further appearing that it is for the best interests of the mortgagee, lien holders, lien claimants, creditors, stockholders and persons in interest, that the property be sold as soon as possible in accordance with the prayer of the petition and no cause being shown to the contrary;

30 It is, on this 30th day of April, 1930, ORDERED, that the mortgagee, and all liens holders, lien claimants, creditors, stockholders and parties in interest appear before this Honorable Court at Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on Tuesday, May 6th, 1930, at nine o'clock in the forenoon, (Eastern Standard Time), or as soon thereafter as counsel can be heard, and show cause why an order should not be made adjudicating:

40 (a) That the property of the defendant corporation was, at the time of the appointment of the receiver herein, encumbered with mortgages and other liens, the legality of which is brought into question and is of a character likely to materially deteriorate in value pending the litigation;

*Order to Show Cause Why Real Estate Should  
Not be Sold*

(b) That the receiver be authorized, empowered and directed to sell the property described in said petition at public or private sale, in accordance with the statute in such case made and provided, free and clear of all mortgages, liens, and encumbrances, including mechanics liens and mechanics lien rights and subject to taxes, assessments and improvements, subject to rights of conditional sales vendors, if any, zoning ordinances, restrictions, rights of way if any, etc., subject to facts as an accurate survey might disclose and subject to such facts as an examination of Chancery proceedings might disclose, for the best price that can be obtained, the proceeds to remain subject to the aforementioned liens and equities of all parties in interest as is the property to be disposed of as the Court shall direct; 10 20

(c) Or, that the receiver be authorized, empowered and directed to sell said property, subject to all encumbrances in said petition referred to or to certain of said mortgages therein referred to and subject to taxes, assessments and encumbrances, subject to rights of conditional sales vendors if any, zoning ordinances, restrictions, rights of way, etc., the proceeds to remain subject to the aforementioned liens and equities of all parties in interest as is the property to be disposed of as the court shall direct; 30

(d) Or that your receiver be authorized, empowered and directed to sell said property subject to both mortgages or some one or more of them and free and clear of all other liens and 40

*Order to Show Cause Why Real Estate Should  
Not be Sold*

10 encumbrances, but subject to taxes, assessments  
and improvements, subject to rights of condi-  
tional sales vendors, if any, zoning ordinances,  
restrictions, rights of way, if any, etc., and free  
and clear mechanics liens and mechanics lien  
rights;

(e) Or in such other manner as the Court may  
direct;

20 And it is further ORDERED that a copy of  
this order, which need not be certified, be served  
upon the mortgagee, lien holders, lien claimants,  
creditors who have filed claims with said receiver,  
stockholders and other parties in interest, as  
nearly as the same may be ascertained from the  
books of the corporation, by mailing a copy here-  
of to each of them at their respective post-office  
addresses as they appear on the books of the  
corporation, within 3 days from the date here-  
of;

30 And it is further ORDERED that a copy of the  
aforementioned petition be left with the Ser-  
geant-At-Arms of this Honorable Court for in-  
spection by the aforementioned mortgages, lien  
holders, lien claimants, creditors and stock-  
holders and parties in interest, or their respec-  
tive solicitors or attorneys.

E. R. WALKER,  
C.

40 Respectfully advised,  
Alonzo Church,  
V. C.



**Affidavit of Charles Hoffman.**

(Filed June 3, 1930.)

## IN CHANCERY OF NEW JERSEY.

10

Between:

SAUL NEEDLE,

Complainant,

and

PERFECTION CONSTRUCTION Co.,

a corporation,

Defendant.

} On Bill &c.  
AFFIDAVIT.

20

STATE OF NEW JERSEY  
COUNTY OF HUDSON

} SS:

Charles Hoffman, being duly sworn according to law, upon his oath, deposes and says:

1. He is the president of the Perfection Construction Co., the defendant herein.

30

2. He has read the petition for sale filed by the Receiver in the above matter.

40

3. Your deponent states that the mortgage given by the Perfection Construction Co. to the Fenner Park Sales Co. was taken by assignment by Lillian E. Hoffman, and that the said Lillian E. Hoffman has paid the sum of \$2,500.00 in cash for said assignment. That the said Lillian E. Hoffman has advanced the full sum of \$2,500.00 which was due under the mortgage mentioned in the petition of sale, and which mortgage was recorded in Book R-67, page 481 of Mortgages for Essex County.

*Affidavit of Charles Hoffman*

4. That the said Perfection Construction Co. owes the said Lillian E. Hoffman, other than the \$8,000.00 due on said mortgages, the sum of \$2,000.00, which was cash loaned to the defendant company and for which the said Lillian E. Hoffman is an unsecured creditor. 10

5. That none of the mechanic lien creditors have claimed priority over the mortgages held by the said Lillian E. Hoffman, except the Caldwell Builders Supply Co. which lien is for the sum of \$343.67.

6. That there has been no work done by any of the mechanics on the building in question, since about the early part of December, 1929. 20

7. That of all the mechanic lien creditors who have filed mechanic lien claims against the said building, none have claimed priority over the mortgages held by the said Lillian E. Hoffman, except the one aforementioned which was filed by the Caldwell Builders Supply Co.

8. Your deponent further states that said building is substantially complete, and there is no fear that the property will depreciate in value, as alleged in the petition of sale. 30

CHAS G. HOFFMAN.

Sworn and subscribed to before  
me this 5th day of May, 1930.

Myron F. Levey,  
Notary Public of N. J.

**Order Denying Right to Foreclose.**

(Filed June 3, 1930.)

## IN CHANCERY OF NEW JERSEY.

10	Between: SAUL NEEDLE,  <div style="text-align: right; padding-right: 20px;">Complainant,</div> and  PERFECTION CONSTRUCTION Co., <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	On Petition <b>ORDER.</b>
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20 This matter being opened to the Court by Philip Sherman, Solicitor for Lillian E. Hofman, in the presence of Benjamin Shanefield, Solicitor of Albert G. De Ronde, receiver of Perfection Construction Co., and it appearing to the Court that Lillian E. Hofman is the holder of two mortgages covering certain premises in the Township of Livingston, in the County of Essex and State of New Jersey, as is more particularly described in the

30 petition filed herein, and that the said Lillian E. Hofman is desirous of foreclosing said mortgages, and joining as party defendant in such foreclosure the said Albert G. De Ronde, receiver as aforesaid, as is more particularly set forth in said petition,

It is, on this 3rd day of June, 1930,

ORDERED, that the prayer of said petition be and the same hereby is denied.

40

E. R. WALKER,  
C.

Respectfully advised,  
 Alonzo Church,  
 V. C.



*Order to Sell*

cause, and it further appearing that the premises described in said petition consist of a tract of land, upon which is a partially constructed brick two-story building, consisting of

10 three stores on the ground floor and apartments on the second floor, encumbered by certain mortgages and mechanics' liens and that the said mechanics' lien creditors and the mortgagee have respectively questioned the extent, validity and priorities of each of the other's liens and/or mortgages covering said premises and that the said premises are of a character likely to materially depreciate in value pending the termination of the litigation respecting the extent, validity and priorities of said liens and mortgages;

20

It is thereupon, on this 3rd day of June, 1930, ORDERED that the property of the defendant corporation, situate, lying and being in the Township of Livingston, County of Essex and State of New Jersey, particularly described as follows:

30 BEING known and designated as Lot #11 in Block N on a map filed, entitled "Map of Fenner Park, Livingston, N. J." surveyed by Freeman & Winston, Surveyors, West Orange, N. J.

was, at the time of the appointment of Albert G. de Ronde, Receiver herein, encumbered with mortgages and liens, the extent, validity and priority of which have been brought into

40 question, and is of a character likely to materially depreciate in value pending the settlement of the litigation respecting the extent, validity and priority of the said mortgages and liens;

*Order to Sell*

And it is further ORDERED that Albert G. De Ronde, the Receiver for Perfection Construction Co., be and he is hereby directed to sell the said premises either by public or private sale, subject to taxes, assessments and local improvements, rights of conditional sales vendors, if any, zoning ordinances, restrictions, rights of way, if any, such state of facts as an accurate survey thereof might disclose, but free and clear of a certain mortgage in the sum of \$2,500.00, originally made to Fenner Park Sales Co. on June 20, 1929, and recorded in Bk. C-67 of mortgages for Essex County, on page 535, and assigned to Lillian E. Hoffman on June 20, 1929, and recorded in Bk. 208 of Assignments of Mortgages for said County, on page 23, and also free and clear of a certain mortgage in the sum of \$5,500.00, made on June 20, 1929, to Lillian E. Hoffman, and recorded in Book R-67 of Mortgages for Essex County, on page 481. The said premises shall also be sold free and clear of liens and rights of liens under the Mechanics' Lien Act of this State, of Saul Needle, Trading as Millburn Electric Co., Ramig Mfg. Co., Caldwell Builders Sup. Co., and Essex Metal Ceiling Co., and free and clear of all other liens and encumbrances or rights of liens and encumbrances of any person or persons whomsoever, for the best price that can be obtained and to retain the moneys received therefor subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the Court shall direct.

E. R. WALKER,  
C.

Respectfully Advised,  
Alonzo Church,  
V. C.

**Notice of Application for Stay of Proceedings.**

(Filed June 23, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

SAUL NEEDLE, <p style="text-align: right;">Complainant,</p> <p style="text-align: center;">vs.</p> PERFECTION CONSTRUCTION Co., <p style="text-align: center;">a corporation,</p> <p style="text-align: right;">Defendant.</p>	}	ON AP- PEAL. NOTICE.
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To:  
 Benjamin Shanefield, Esq.,  
 Solicitor of Receiver,  
 810 Broad Street,  
 Newark, N. J.

Sir:

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Please Take Notice that on Thursday, the 19th day of June, 1930, at 10:30 o'clock in the forenoon, daylight saving time, or as soon thereafter as counsel may be heard, I shall apply to the New Jersey Court of Errors and Appeals at the State House, Trenton, New Jersey, for a stay of proceedings in the above cause, pending disposition of an appeal by the said Court of Errors and Appeals, from two interlocutory orders made on the 3rd day of June, 1930, by the Court of Chancery of New Jersey, and

40

at the same time and place, I shall present a petition to stay the proceedings on appeal, a copy of which is hereto annexed.

Dated, June 16, 1930.

PHILIP SHERMAN,  
 Solicitor of Defendant,  
 Lillian E. Hofmann,

JEROME C. EISENBERG,  
 Of Counsel.



*Petition for Stay of Proceedings*

There is erected on the said land, a brick house having three stores on the ground floor, and two apartments on the second floor.

10 3. The said tract of land is subject to two mortgages held by your petitioner, one in the amount of \$2,500.00 originally made by the Perfection Construction Co. to Fenner Park Sales Co. on June 20th, 1929, and acknowledged on June 20, 1929, before Louis Stein, and recorded in Book C 67 of Mortgages for Essex County, page 535, and assigned by assignment of mortgage of the Fenner Park Sales Co. to your petitioner on June 20th, 1929, which assignment is recorded in Book 208, page 23, of assignments for said county; and another mortgage in the amount of \$5,500.00 made by the Perfection Construction Co. to your petitioner, on the 20th day of June, 1929, and recorded in Book R 67 of mortgages for Essex County, page 481.

30 4. The said mortgages are past due that your petitioner, being desirous of foreclosing the said mortgages, filed a petition in the Court of Chancery, praying to join the said Albert G. de Ronde, receiver, as a party defendant to the said foreclosure suit, and this petitioner has appealed from the said order to the Court of Errors and Appeals.

40 5. On the 3rd day of June, 1930, on petition filed by the said Albert G. de Ronde, Receiver for the Perfection Construction Co., an order was advised by the said Court of Chancery, authorizing the said Receiver to sell the property free and clear of your petitioner's aforesaid two mortgages, and this petitioner has appealed from the said order to the Court of Errors and Appeals.

*Petition for Stay of Proceedings*

6. Your petitioner further shows that if the proceedings in this cause be not stayed, it will be impossible to restore the petitioner to her former position, in case she is successful on her appeal, for the reason that the said property, will, by that time, have been sold under the said order made in the Court of Chancery, free and clear of the mortgages of petitioner, which is the subject-matter of her appeal. 10

7. The persons who will be affected by a stay of further proceedings in this cause are the Complainant, Saul Needle, and Albert G. de Ronde, the Receiver of the defendant corporation. 20

Petitioner therefore prays that all further proceedings in this cause may be stayed pending the disposition of the said appeal by this Honorable Court.

PHILIP SHERMAN,  
Solicitor for Petitioner.

JEROME C. EISENBERG,  
Of Counsel. 30

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } SS:

Lillian E. Hofmann, of full age being duly sworn according to law upon her oath, deposes and says:

1. That she is the petitioner named in the foregoing petition. 40

2. That on the 29th day of April, 1930, the

*Verifying Affidavit*

Chancellor on the advice of Vice Chancellor Alonzo Church, adjudged the defendant, Perfection Construction Co., a corporation, to be insolvent, and appointed Albert G. de Ronde Receiver of the said defendant company.

3. The said Perfection Construction Co. was the owner of certain premises situate in the Township of Livingston, County of Essex and State of New Jersey, particularly described as follows:

BEING known and designated as Lot #11 in Block N on a map filed, entitled "Map of Fenner Park, Livingston, N. J.," surveyed by Freeman & Winston, Surveyors, West Orange, N. J.

There is erected on the said land, a brick house having three stores on the ground floor, and two apartments on the second floor.

4. That the said tract of land is subject to two mortgages held by your deponent, one in the amount of \$2,500.00 originally made by the Perfection Construction Co. to Fenner Park Sales Co. on June 20th, 1929, and acknowledged on June 20, 1929, before Louis Stein, and recorded in Book C 67 of Mortgages for Essex County, page 535, and assigned by assignment of mortgage of the Fenner Park Sales Co. to your deponent on June 20th, 1929, which assignment is recorded in Book 208, page 23 of assignments for said county; and another mortgage in the amount of \$5,500.00 made by the Perfection Construction Co. to your deponent, on the 20th day of June, 1929, and recorded in Book R 67 of mortgages for Essex County, page 481.

*Verifying Affidavit*

5. That the said mortgages are past due; that your deponent, being desirous of foreclosing the said mortgages, filed a petition in the Court of Chancery, praying to join the said Albert G. de Ronde, Receiver, as a party defendant to the said foreclosure suit, and your deponent has appealed from the said order to the Court of Errors and Appeals. 10

6. On the 3rd day of June, 1930, on petition filed by the said Albert G. de Ronde, Receiver for the Perfection Construction Co., an order was advised by the said Court of Chancery, authorizing the said Receiver to sell the property free and clear of your deponent's aforesaid two mortgages, and your deponent has appealed from the said order to the Court of Errors and Appeals. 20

7. Your deponent further shows that if the proceedings in this cause be not stayed, it will be impossible to restore deponent to her former position, in case she is successful on her appeal, for the reason that the said property, will, by that time, have been sold under the said order made in the Court of Chancery, free and clear of the mortgages of deponent, which is the subject-matter of her appeal. 30

8. That the persons who will be affected by a stay of further proceedings in this cause are the Complainant, Saul Needle, and Albert G. de Ronde, the Receiver of the defendant corporation.

LILLIAN E. HOFFMAN.

Sworn and subscribed to before me this 11th day of June, 1930. 40  
Irving Mintz,  
Attorney at Law of New Jersey.

Service of a copy of the within Notice & Petition acknowledged this 16th day of June, 1930.

BENJ. SHANEFIELD,  
Sol'r for Receiver.



## New Jersey Court of Errors and Appeals

Between

SAUL NEEDLE,  
*Complainant,*

LILLIAN E. HOFMANN,  
*Appellant,*

and

PERFECTION CONSTRUCTION Co., a  
corporation,  
*Defendant,*

ALBERT G. DERONDE, Receiver,  
*Respondent.*

On Appeal from  
Court of  
Chancery.

Sat Below:

HON. EDWIN ROBERT WALKER, Chancellor.

HON. ALONZO CHURCH, Vice-Chancellor.

### BRIEF OF PETITIONER-APPELLANT.

#### Statement of Facts.

The controversy in this cause arises between the receiver of Perfection Construction Co. and the holder of two mortgages. The petition of the mortgagee to foreclose mortgages held by her and the petition of the receiver to sell lands of the defendant corporation free and clear of all liens were argued at the same time.

The Court below denied the petitioner's right to foreclose and ordered a sale of the property free and clear of all liens. It is from the orders of the

Chancellor, advised by Vice-Chancellor CHURCH, denying the petitioner the right to foreclose her mortgages and ordering the receiver to sell the property, that the petitioner appeals, as well as from the order appointing the receiver of the defendant corporation. The facts in this case are as follows:

On June 20, 1929, the defendant company purchased lands and premises located in the Township of Livingston, County of Essex and State of New Jersey (known and designated as Lot #11 in Block N, on a Map entitled "Map of Fenner Park, Livingston, N. J." surveyed by Freeman & Winston, Surveyors), from the Fenner Park Sales Company, to which latter corporation the defendant company executed a purchase money mortgage in the sum of \$2,500.00. The appellant purchased said mortgage (State of Case, p. 42, Paragraph #2) from the Fenner Park Sales Company by an assignment duly recorded in the Register's Office of Essex County. On the same day, to wit, June 20, 1929, the defendant company made and executed to the appellant, Lillian E. Hofmann, another mortgage (State of Case, p. 42, Paragraph #3) in the sum of \$5,500.00 upon the same premises.

On March 28, 1930, pursuant to a bill filed in the above-entitled cause by the complainant Saul Needle, who was a judgment-creditor holding a judgment which had been reduced to the sum of \$125.00, against the defendant company, praying that said corporation be adjudged insolvent, and that a receiver be appointed therefor (State of Case, pp. 12 to 21, inclusive), an order was made by the Chancellor, upon the advice of Vice-Chancellor ALONZO CHURCH, appointing Albert G. deRonde custodial receiver of said corporation, and directing said corporation to show cause on

the 8th day of April, 1930, why it should not be adjudged insolvent and a receiver appointed (State of Case, pp. 22-23). Upon the return day of said order to show cause, the matter was continued and finally, on the 29th day of April, 1930, an order was advised, adjudging the said Perfection Construction Co. to be insolvent, and appointing the said Albert G. deRonde receiver of said corporation (State of Case, pp. 36 to 38, inclusive).

At the time of the appointment of the aforesaid receiver, said defendant company was the owner of the premises in the Township of Livingston, heretofore described, upon which a two-story brick apartment house, containing three stores and two apartments, had been erected.

On April 30, 1930, the receiver filed a petition in which he asked for authority to sell the property of the defendant corporation free, clear and discharged of and from the lien of the mortgage held by appellant, as well as free and clear of all the liens and encumbrances existing against it. In said petition, it was alleged

(a) that the appellant, Lillian E. Hofmann, was the owner of the two mortgages mentioned herein;

(b) that the Caldwell Builders Supply Co. had *obtained a judgment* on a mechanic's lien in the sum of \$343.67 on April 11, 1930, generally against the defendant company, and specially against the land and building hereinbefore described, with priority over the mortgages held by the appellant;

(c) that the receiver is uncertain as to the validity of the claim of Lillian E. Hofmann;

(d) that the said building was not complete, and that it was open to the elements, and that the cellar was filled with water and that there were open spaces in the rear of the building, and that one of the plate glass windows in one

of the stores in said building was broken, and the

petition further set forth that unless the building were sold, it was likely materially to depreciate in value (State of Case pp. 47 to 50, inclusive).

The matter was continued until June 3, 1930. On that date, the solicitor of the defendant company and the solicitor for the appellant objected to any order directing a sale of the aforesaid property free, clear, and discharged of and from the lien of the mortgages held by the appellant, on the ground that there was no dispute as to the priority of the mortgages, in view of the fact that no mechanic lienors claimed priority or disputed the lien of the appellant's mortgages, except the Caldwell Builders Supply Company, which *had already obtained a judgment in a law court*, and that, consequently, the *priorities had been fixed by a court of law*, and, further, that the building was not deteriorating and, in proof thereof, filed an affidavit to that effect (State of Case pp. 56-57), and objected, under the circumstances, to the right of the Court to order said sale.

At the same time, there was argued before the Vice-Chancellor the right of the appellant to foreclose the two mortgages held by her. She had previously filed a petition (State of Case pp. 41 to 43, inclusive), setting forth that she was the holder of the two mortgages mentioned herein, and that the mortgages were due and payable and that no interest had been paid on account of the mortgages, and that she desired to institute foreclosure proceedings, praying that an order be made for leave to file a bill of foreclosure against the defendant company for the purposes set forth, and to join as one of the defendants therein, Albert G. de-Ronde, receiver as aforesaid, in such foreclosure. The Court then advised an order denying the ap-

plication of the appellant and the prayers of her petition (State of Case p. 58).

Simultaneously with said order, the Court advised an order directing the receiver of the defendant company to sell the property free, clear, and discharged of and from the lien of the mortgages of your appellant, and of all other liens and encumbrances, for the best price that could be obtained, and to retain the monies received therefor, subject to the same liens and equities of all parties in interest, as was the property before sale, to be disposed of as the Court should direct (State of Case pp. 59 to 61, inclusive).

The appellant, Lillian E. Hofmann, has appealed from the aforesaid orders of the Court below.

After the notice of appeal had been filed, an order was made by this Honorable Court, staying proceedings of the order directing the receiver to sell the property free and clear of liens until such time as this appeal could be heard and determined (State of Case p. 68).

### POINT I.

**The Court below erred in appointing a custodial receiver for the defendant corporation, in that the complainant did not make out a *prima facie* case showing that immediate and irreparable injury would follow if a receiver were not appointed before notice could be given and a hearing held.**

The Vice-Chancellor in the Court below, at the time of the filing of the bill of complaint, was faced with the aspect of a corporation owning a building which was then tenanted, the bill alleging that the company owned real estate which was encumbered

by two mortgages and four lien claims, one of which the complainant held.

It was also alleged in the bill of complaint that the complainant held a judgment which he alleged had been reduced to \$150, and that he did not know the value of the lands and building owned by the defendant company. The bill of complaint *shows no other facts*. It *alleges* that immediate and irreparable injury would follow if a receiver were not then appointed. These are the bare allegations upon which the Vice-Chancellor found, as a matter of fact, that immediate and irreparable injury would follow, and appointed a custodial receiver without notice.

This case is not one of a manufacturing concern where orders are being filled from day to day, where new liabilities are being incurred, and where assets are being hidden or wasted, or where assets would disappear before a hearing could be held. The case simply presents a company which owned one piece of property, upon which it had erected a building and upon which it had incurred debts of mechanics, who must have looked solely to the value of the land and building for payment of their debts. It is interesting to note that the complainant, in the verifying affidavit attached to the bill, says:

“That in the event of a forced sale, this property will bring much less than its fair and reasonable value, all of which would be to my detriment, and the stockholders and other creditors of the defendant” (State of Case p. 21, ll. 14 to 19, inclusive).

This matter will be discussed fully and at length in connection with the order later procured by the solicitor of the complainant in this cause. Upon the facts of the bill, one wonders how immediate and irreparable injury could follow, before a hear-

ing could be held and notice given to the defendant company.

The land and the building of the defendant were its only assets. It could not dispose of such assets by sale, pledge, mortgage, or otherwise, unless and until the debts due its creditors were paid and paid in full.

It was apparent, on the face of the bill, that the defendant company had attempted to liquidate some of its debts. It had, in fact, reduced the complainant's debt from \$310.00 to \$125.00.

It has been decided, again and again, that a preliminary injunction should not be awarded unless from the pressure of urgent necessity, and unless also the injury to be prevented *pendente lite* would be irreparable. So held Chancellor WALKER in *Aldrich v. Union Bag and Paper Co.*, 81 N. J. Eq. 244, citing the opinion of Chief Justice GUMMERE, speaking for this Court in *McMillan v. Kuehnle*, 78 N. J. Eq. 251.

The learned Vice-Chancellor utterly disregarded the established practice in such cases as laid down by Rule 111a of the Court of Chancery, which reads as follows:

“No receiver shall be appointed for any corporation, partnership or individual under the general equity power of this court, commonly called an ‘equity’ or ‘custodial’ receiver, in any suit, nor shall any order of decree for a preliminary injunction be issued, or any temporary restraining order be granted, therein, without notice to, or the consent of the defendant, *unless it shall clearly appear from the duly verified facts that immediate and irreparable injury will result before notice can be served and a hearing had therein*; and no receiver shall be appointed for an insolvent corporation under power conferred upon this Court by the statute, without notice to, and an opportunity to be heard by, the defendant.”

Arguing solely from the facts as presented by the bill of complaint, it is impossible to see how the Vice-Chancellor determined, in the case at bar, that immediate and irreparable injury would follow until such time as it would take to notify the defendant and its creditors, and a hearing could be held.

## POINT II.

**The Court below erred in appointing a custodial receiver in that its order did not state the Court's finding of fact as to why the injury was immediate and irreparable.**

The learned Vice-Chancellor again disregarded the established practice of the Court of Chancery, in failing to comply with the provisions of Rule 111c, which reads as follows:

*“Every order or decree for a preliminary injunction or containing any temporary restraint, or appointing an ‘equity’ or ‘custodial’ receiver made without notice in any such suit, shall state the court’s finding of fact as to why the injury is immediate and irreparable, and such order or decree shall by its terms expire within such time, not to exceed seven days, as the court may fix, unless within the time so fixed the decree or order shall for good cause shown, be extended not to exceed a like period, and the reason for such extension shall be stated in the extending order or decree.”*

The order appointing the custodial receiver (State of Case pp. 22-23) contained no finding of fact that the injury would be immediate and irreparable, in violation of the aforesaid rule. Here again was a loose and heedless disregard of the established practice in the Court of Chancery.

## POINT III.

**The Court below erred in making the order to show cause without giving notice to the stockholders and creditors of the corporation.**

The learned Vice-Chancellor once more disregarded the established practice in not complying with Rule 111b of the Court of Chancery, which reads as follows:

“If an ‘equity’ or ‘custodial’ receiver be appointed for a corporation, partnership or individual, without notice, *there shall be an order addressed to the stockholders and creditors of the corporation, or to the creditors of the partnership or individual, as the case may be, to show cause why the receiver and receivership should not be continued or made permanent.*”

The creditors of the defendant company had no opportunity to point out to the Vice-Chancellor that in the case at bar the appointment of a receiver was unwarranted. This disregard of the practice in such case can only lead to the conclusion that the Court below did not examine carefully the case presented by the bill of complaint. Had the stockholders and creditors of the defendant corporation been apprised of an order to show cause why the receiver and receivership should not be continued or made permanent, they would, on the return day, have refuted the *allegations* in the bill inferring the insolvency and would have demonstrated to the Court that the case at bar was one wherein the Court of Chancery should not invoke the strict and harsh powers conferred upon it by the General Corporation Act, and that, in all probabilities, this corporation, with its own management, could work out its own salvation with-

out the needless burden and expense of a receiver and his counsel.

#### POINT IV.

**The Court below erred in appointing a statutory receiver for the defendant corporation, in that there were no proofs before it to justify such an order.**

On April 29, 1930, the learned Vice-Chancellor advised an order adjudging the corporation insolvent, and appointed Albert G. deRonde statutory receiver. In the making of that order, there were no more proofs before the Court other than those originally submitted in the verifying affidavit attached to the bill of complaint. In fact, the Court had before it an affidavit of the president of the defendant company (State of Case pp. 31 to 33, inclusive), denying the material allegations contained in the bill of complaint, and an affidavit of a licensed real estate broker (State of Case pp. 34-35), which stated that the land and building of the defendant corporation were worth \$25,000. There was no other proof offered by the complainant. If the Court was not justified in appointing a custodial receiver on the facts set forth in the bill of complaint, how could it have been justified in appointing a statutory receiver, when every material allegation in the bill was controverted by affidavits produced at the hearing, when no testimony was taken, and when no proof was offered by the complainant other than the original affidavit attached to the bill of complaint, and when the affidavits submitted by the defendant questioned the good faith of the complainant in filing the bill?

It was demonstrated at the hearing that the complainant was amply secured with his judgment, as

it was a lien on the property. It was also shown (State of Case p. 33) that the defendant company was not insolvent, as its assets exceeded its liabilities by an amount which may be roughly reckoned as anywhere from \$8,000 to \$10,000. There was manifest no violation of the provisions of the Statute ("An Act Concerning Corporations, revision of 1896"). Depriving a statutory legal business entity of its corporate life is a judicial act which should not be lightly exercised, unless the violation of the provisions of the Statute is manifest and reasonably apparent, and where the conditions for interference by the Court prescribed in the Corporation Act do not appear in the situation presented by the proof, the defendant corporation should not be restrained from the operation of its business, nor should a receiver be appointed. So held Justice MINTURN, speaking for this Court in *Greenbaum v. Lafayette & Broad Realty Corp.*, 96 N. J. Eq. 317.

See also,

*McMullin v. McArthur Electric Manufacturing Co.*, 73 N. J. Eq. 527.

"The appointment of a receiver is not a matter of absolute legal right, and therefore, sound discretion should be exercised by a court before any such appointment is made. It is highly inequitable to appoint a receiver where it appears that the ultimate result will be a sacrifice of the assets of the corporation wholly to the profits of counsel and receiver and to costs and expenses of such receivership."

So held Justice KALISCH in *Glaser v. Achtel-Stetter's Restaurant*, 106 N. J. Eq. 150.

## POINT V.

**The Court below erred in adjudging the corporation insolvent, in that it appeared from the proofs before it that the corporation could, by an honest use of credit, meet its maturing obligations.**

The Court below had before it merely a bill of complaint drawn in the usual form, which simply alleged "upon information and belief" that the defendant corporation had suspended its business within the meaning of Section 65 of the Corporation Act, and that it had no available assets or sufficient credit to conduct its business in the manner heretofore. The allegations in the bill upon which the order to show cause was based, and upon which the Court appointed a receiver for the corporation, were mostly upon information and belief, without giving the sources of the information. No facts or circumstances are set forth in the bill of complaint which would justify the Court in the appointment of a receiver.

It was held, again and again, that allegations such as those in the bill of complaint filed in this cause (State of Case pp. 12-13, Paragraph #5) are not sufficient to justify a Court in adjudging a corporation insolvent and appointing a receiver.

See:

*Atlantic Trust Co. v. Consolidated Electric Storage Co.*, 49 N. J. Eq. 402.

There must be facts shown from which the Court can draw the legal conclusion that the company is actually insolvent.

See:

*Greenbaum v. Lafayette & Broad Realty Corp.*, *supra*.

In *Newfoundland Railway Construction Co. v. Schack*, 40 N. J. Eq. 222, this Court said:

“An allegation in a bill that the company is insolvent and has suspended its business for want of funds to carry on the same, is not sufficient to have the corporation declared insolvent, and a receiver appointed. The facts and circumstances upon which the insolvency of the corporation shall appear, must be set out.”

An examination of the cases seems to show that, although the statute authorizes the appointment of a receiver, mere proof of insolvency will not make it the duty of the Chancellor to appoint a receiver. It must, in addition, appear that the corporation will not be able, within a short time, to resume its business with safety to the public and advantage to its stockholders.

*Atlantic Trust Co. v. Consolidated Electric Storage Co.*, 49 N. J. Eq. 402;

*Cook v. Trenton Pottery Co.*, 53 N. J. Eq. 29;

*Streit v. The Citizens Fire Insurance Co.*, 29 N. J. Eq. 21.

The affidavit controverting the facts alleged in the bill of complaint shows that the corporation was trying to get a new mortgage loan of \$17,000 on its property, and that sum would be sufficient to pay the mortgages of the appellant and all the other creditors (State of Case, pp. 31 to 33, inclusive). In fact, it was pointed out to the Court that, by an honest use of credit, the defendant company would soon be able to pay all of its just debts.

The case was a simple one, with few facts to be considered by the Vice-Chancellor. The uncontroverted value of the property of the defendant corporation was from \$20,000 to \$25,000. Its

obligations totaled at the most \$13,000. The amount due on complainant's judgment was also disputed; it was alleged that instead of \$150 due on the judgment, there was only due the sum of \$125. The complainant himself, in the verifying affidavit attached to the bill of complaint, set forth that the property at a forced sale would bring much less than its present value and consequently deprive its creditors of full satisfaction of their claims. What was the purpose of the Court in appointing a receiver, and thereby conclusively preventing the corporation by an honest use of its credit from paying its obligations? It is apparent, from the facts before the Court, that the complainant, over-zealous in his attempt to collect the \$125 or \$150 due him, has used the powers of the court of equity, under the Corporation Act, in such manner as to injure the other creditors of the defendant company, and ultimately, perhaps, even himself.

The result reached was an additional expense to the corporation, a highly inequitable proceeding, and a sacrifice of the only assets of the corporation to which the creditors looked for payment. This practice was severely frowned upon by this Court in the case of *Glaser v. Achtel-Stetter's Restaurant*, 106 N. J. Eq. 150.

It must be apparent that, in the case at bar, there was gross abuse of discretion by the learned Vice-Chancellor.

## POINT VI.

The power to order a sale free and clear of encumbrances depends upon two jurisdictional prerequisites specified in the statute (Corporation Act of 1896, Sec. 81, P. L. 1896, p. 308): (a) the legality of the liens must be brought in question; (b) the property must be of a character materially to deteriorate in value pending the litigation. These two jurisdictional prerequisites not having been proved, the Court below erred in making such an order in the case at bar.

The Corporation Act of 1896, Section 81, provides that:

“Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct (L. 1896, Ch. 185, p. 303, Sec. 81; C. S. p. 1649, Sec. 81).”

Under that Act, the Court of Chancery has no authority to order a sale of property free and clear of encumbrances existing against the property in the possession of a receiver of an insolvent corporation, unless there is a dispute concerning the said liens and the property is of a character materially to deteriorate in value pending the liti-

gation. *Reilly v. Penn Cordage Co.*, 58 N. J. Eq. 459; *Randolph v. Larned*, 27 N. J. Eq. 557 (reversing 26 N. J. Eq. 269); *Bahler v. Robert Treat Baths*, 100 N. J. Eq. 525.

In *Randolph v. Larned*, *supra*, Justice GREEN said:

“The power to order a sale clear of encumbrances depends upon two prerequisites specified in the statute. The legality of the liens must be brought in question and the property must be of a character materially to deteriorate in value pending the litigation.”

This was followed by *Reilly v. Penn Cordage Co.*, *supra*, in which the receiver of the Penn Cordage Co. filed a petition in which he alleged that a dispute had arisen concerning the validity of mortgages, judgments, executions, and tax liens existing against property owned by the insolvent corporation and that it could not be sold subject to said liens because bidders at the sale would not be able to determine what title they would get or what valid liens the same might be subject to and prayed for a sale free and clear of the said encumbrances—the liens thereof to attach to the proceeds. Vice-Chancellor GREY, in denying the receiver's application, said:

“The only authority of this Court in case of an insolvent corporation to order such a sale clear of liens and encumbrances charged upon the property before jurisdiction over it was assumed by this Court, is conferred by Section 81 of the General Corporation Act, P. L. of 1896, p. 303. The Court of Appeals has declared, in the case of *Randolph v. Larned*, 12 C. E. Gr. 560, that the power of this Court to order such a sale, clear of prior encumbrances, depends upon the existence of the two prerequisites specified in that statute—first, the legality of the prior liens must be brought in question, and secondly, the prop-

erty must be of a character materially to deteriorate in value pending the litigation. The Court declared that the statute should receive a liberal construction, and that the dispute bringing into question the legality of the liens was not to be limited to an objection to the validity of the mortgage itself, but might exist by reason of disputes touching the extent of the lien created by it, its relative priority to other encumbrances, or other equities raising substantial differences between the parties, the effect of which might lead to extended litigation. If these conditions do not exist, the mischief which the statute is intended to correct does not threaten, and the remedy which the statute applies is not needed.

“The Legislature did not intend that this statute should be used as an excuse to deprive preceding encumbrances of their right (subject to such order of this Court as might preserve the property taken into custody) to use by foreclosure or other proceedings the remedies which secured them by their contracts the power to take the initiative steps, and to control the time, place and circumstances when, where and under which the property mortgaged should be disposed of. This privilege, in many cases, may have had a great influence in inducing the making of the contract, and may have added largely to the value of the mortgage security as an investment. It is only when the two jurisdictional facts of disputed prior encumbrances, and probability of deterioration in value of the property, both exist, that this Court is justified in depriving the holder of the prior encumbrances of his right to enforce at his option, the remedy secured him by his contract.

“So far as the existence of the first jurisdictional fact—the bringing in question the legality of the prior encumbrances—is involved, it appears to be sufficiently established.

“The second condition of fact necessary to the exercise of this statutory jurisdiction is that the property must be of a character

materially to deteriorate in value pending the litigation. The existence of this second condition is just as essential to the use of this remedy as is the establishment of the first. Both are necessary prerequisites to the exercise of the power. *Randolph v. Larned, ubi supra.*

"There is no allegation in any proceeding in this cause that the property in question is of a character materially to deteriorate in value pending the litigation. There is no evidence offered to show the existence of such a condition. This court cannot ignore the fact that it has, on the application of the receiver, made several orders in this insolvent proceeding for the conduct of the business of the insolvent company, showing that its property is in present producing use for the purposes for which it was designed, and the trend of the testimony goes to show that there is no likelihood that within a period necessary for the foreclosure and judicial settlement of all the disputes and final realization upon the prior mortgage to the Knickerbocker Trust Company, the property would be subject to material deterioration in value.

"In the absence of a showing that both the conditions exist which are prescribed by the statute, and declared by the court of appeals to be prerequisites to the exercise of the power, the application of the receiver seeking an order for sale of the property of the insolvent company, clear of prior encumbrances under the power given by the eighty-first section of the Corporation Act, must be refused, and the holders of those securities must be permitted to obtain their remedies by proceeding with a foreclosure."

That the Court of Chancery has no jurisdiction to order a sale free and clear of liens unless these two prerequisites exist is clearly shown in the case of *Bahler v. Robert Treat Baths, supra*, where even the consent of a lien holder, whose lien was not

contested, to a sale free and clear of its liens was held to confer no jurisdiction upon the Court of Chancery to make it. In that case, Chief Justice GUMMERE, speaking for this Court, said:

“We consider, however, that the decree which orders the sale of the corporation’s property and assets, so far as it directs that the real estate be sold free and clear of all encumbrances, cannot be legally justified. As was pointed out by this Court in *Randolph v. Larned*, 27 N. J. Eq. 560, the power of the Court of Chancery to order a sale of real estate clear of prior encumbrances depends upon the existence of two prerequisites specified in the statute (Corporation Act par. 81; Comp. Stat. p. 1649): First, it must appear that the legality of liens is brought in question, and, second, that the property is of a character materially to deteriorate in value pending the litigation. The real estate of the insolvent corporation in the present case is encumbered by two mortgages, the first of which in priority is held by the Franklin Savings Institution, and was given to secure the payment of \$55,000. The second is held by a concern known as the Rolo Company, and was given to secure the payment of \$62,500. That the first of these mortgages—namely, that held by the savings institution—is legal in every respect is conceded. The validity of the Rolo Company mortgage, however, is challenged. In this situation the mandate of the decree, so far as it directs that the property be sold free and clear of the savings institution’s mortgage, is not permitted by the statute, and to that extent is without legal justification.

“We have not overlooked the fact that this decree for sale was made with the consent of the savings institution; but that consent cannot operate to enlarge the jurisdiction conferred upon the Court by the statute. The legislative purpose, as we conceive, is not only to protect encumbrances, but also general creditors; and the sale of property free and

clear of a first mortgage, the validity of which is not in any way disputed, would also necessarily prevent such creditors from protecting their interests by becoming bidders at the sale, for it would require them to raise in cash the full value of the real estate to be sold, instead of permitting them to purchase the property subject to valid existing liens thereon.

"For these reasons we conclude that the decree for sale should be modified so as to provide that the sale of this property shall be made subject to the lien of the Franklin Savings Institution's mortgage."

As to the first prerequisite, it is submitted that the Court of Chancery erred in finding from the facts before it that the legality of the mortgages held by the appellant was brought into question. The petition submitted by the receiver clearly shows that there was only one lien claimant who questioned the priority of the mortgages of the appellant, and, before the institution of the proceedings for the appointment of a receiver, the Caldwell Builders Supply Co. succeeded in obtaining a *judgment* in the sum of \$343.67 against the Perfection Construction Co. and prior to the mortgages held by the appellant. It certainly cannot be said that the Legislature contemplated a situation where the priorities had already been fixed by law as they were in this case, to come within the meaning of the statute.

The first prerequisite, therefore, in order to give the Court jurisdiction was absent in this case. There were no disputes among the lienors and the mortgagee, as far as the receiver was concerned. The priorities were all fixed and determined prior to the appointment of the receiver, and there was nothing which the receiver could do to upset the determination. There is no evidence that the receiver took any proofs. There is no evidence that

the appellant, at any time, came before the receiver and questioned the priority obtained in the law court by the aforesaid mechanic lienor.

As to the second prerequisite of deterioration, the petition of the receiver alleges the following: "The building being erected on the said premises is not complete. It is open to the elements and the cellar is filled with water. There are open spaces in the rear of the said building and one of the plate glass windows in one of the stores in said building is broken. If the said building is left in the condition now existing, pending the litigation as to the priority of the liens set forth in this petition, its character is such that it is likely to materially *depreciate* in value."

Refuting that statement, an affidavit of Charles G. Hofmann, the president of the Perfection Construction Co., alleges (State of Case pages 56-57) that the said building is substantially complete, and there is no fear that the property will depreciate in value, as alleged in the petition for sale.

It is submitted that the Court of Chancery erred in finding from the facts before it, as set forth in the petition of the receiver, that the property was of a character materially to deteriorate pending the alleged litigation of the priority of the appellant's mortgages. It is to be noted that the receiver in his petition (State of Case pages 47 to 50, inclusive) for a sale free and clear of liens, uses the word "*depreciate*." The Statute and the cases require "*deteriorate*." It is also to be noted that the order of the Court below directing the receiver to sell the property free and clear of liens, also says (State of Case page 60, l. 18, *et seq.*):

"and that the said premises are of a character likely to materially *depreciate* in value pending the termination of the litigation" etc.

The Century Dictionary, Volume II, page 1571, defines "deterioration" as being "a growing or making worse; a state of growing worse": and "deteriorate"—"to make worse; reduce in quality; lower the essential character of; to grow worse; be or become impaired in quality; degenerate."

It would, therefore, appear that "deterioration" means something which concerns the physical character and constitution of the premises in question. It cannot mean depreciation in value, for depreciation is confined solely to price or value. The Century Dictionary, Volume II, page 1547, defines "depreciation" as being: "The act of lessening or bringing down in price or value; a fall in value, a reduction of worth; as, a paper currency will depreciate unless it is convertible into specie."

Depreciation, therefore, concerns itself chiefly with rate, price or value and not with the character, quality or nature of an article or thing. In order, therefore, to enable the Court to sell property free and clear under the provisions of the above act it must be shown that the property in question is of such a kind that it will physically become impaired in character and quality and not merely depreciate in value. It must be shown that there exists such an unusual deterioration that it would result in immediate loss to the estate and create a burden which the estate could not support, not merely the deterioration or wear and tear incident to every building. To adopt a construction which would permit depreciation to constitute deterioration would enable the Court of Chancery to sell all real estate comprised in insolvent estates, no matter what the physical condition of the property might be—for real estate is always subject to depreciation in market value due to changes in the manner of living and changes in design and the fact that all buildings

gradually become obsolete. The purpose of the 81st section of the Corporation Act in empowering the Court of Chancery to order a sale of property free and clear of encumbrances is to prevent shrinkage in the estate by reason of the deterioration physically thereof, something like that of perishability of personal property. Its primary purpose is to save the *corpus* of the estate as well as to prevent all unusual costs incident to its preservation.

The burden of showing that the property was of a character materially to deteriorate in value was, of course, upon the receiver, and the Court should not be given this power to sell free and clear unless the proofs before it clearly establish the existence of the two prerequisites laid down in the Act. The only proof offered by the receiver in support of his application to sell the aforesaid property free and clear of all liens and encumbrances, including the mortgages of the appellant, was his own petition. There is nothing in the petition or in the affidavit of the receiver which would tend to show that he was a person competent to pass upon the condition or value of real estate of the type in question. The affidavit attached to the petition is purely formal and based upon opinion unsupported in any way. Moreover, when we consider that the receiver and his counsel were financially interested in a sale free and clear of all liens, because such a sale would produce a fund from which their fees would be paid, it is evident that his petition and affidavit are of little weight, and should not have been relied upon in exercising such a drastic power and prerogative.

The appellant produced an affidavit of the president of the company, the person who built the building in question and who is familiar with its conditions and its value, who swore that there

was no fear that the property would deteriorate in value, as was alleged in the receiver's petition; and the said affidavit clearly sets forth that there was no dispute as to the priority of the mortgages held by the appellant. The Caldwell Builders Supply Co. had obtained a *judgment* in the sum of \$343.67 prior to the appointment of the receiver.

It is therefore submitted that, on the proofs before it, the Court could not find the following (State of Case p. 60) :

“that the said mechanics lien creditors and the mortgagee have respectively questioned the extent, validity and priorities of each of the other's liens and/or mortgages covering said premises and that the said premises are of a character likely to materially depreciate in value pending the termination of the litigation respecting the extent, validity and priorities of said liens and mortgages,”

and that the Court therefore had no jurisdiction, power, and authority to order a sale free and clear of the appellant's mortgages.

## POINT VII.

**Under the circumstances in the case at bar, the Court below erred in denying the appellant the right to foreclose the mortgages held by her.**

The petition of the appellant, setting forth that she is the holder of two mortgages in the sum of \$8,000, and that the principal amounts of the mortgages have been due and payable, and that no interest has been paid, was undisputed. There was an affidavit filed by the president of the defendant company wherein he sets forth in detail the

amount lent by the appellant to the defendant company (State of Case pp. 31 to 33, inclusive).

The appellant asked permission to institute foreclosure proceedings and join the receiver as a party defendant in said proceedings. The only reason that the appellant had to file said petition was because of the fact that this matter was in the hands of the Court and that permission had to be received from the Court of Chancery. A careful reading of the cases discloses no instance where the Court arbitrarily denies the holder of a mortgage the right to institute foreclosure proceedings when the facts as alleged in the case at bar are undisputed. In fact, the denial of the petition was clearly an attempt to deprive the appellant of a vested property right which she had in the two mortgages, and there was no reason, in equity, for the Court to have refused the appellant that right. The only possible explanation of the Vice-Chancellor's order is the fact that he wished the receiver to sell the property free and clear of the mortgages held by the appellant, which was covered under *Point VI*.

Professor Pomeroy, in his treatise on Equity Jurisprudence, Fourth Edition, Volume 4, page 3769, Section 1597, says:

“It is said that leave should not be granted to sue a receiver unless the applicant's complaint makes out a *prima facie* case; that the court should not allow its receiver to be harassed by a suit where, according to his own showing, the plaintiff has no cause of action. But, on the other hand, it is settled that the consent of the court is not to be arbitrarily refused when the plaintiff presents a meritorious case; it is said: Parties having claims upon the property have a right to prosecute them by suit, which is said to be liable to be abridged, if leave of court must

be had for that purpose. *The leave* is, however, *necessary only for the orderly administration of justice*, and is not to be denied arbitrarily, but only for legal unfitness for the purposes when and where sought. The right remains, and leave is to be granted according to the right and the proper adaptation of the proceedings."

Chancellor WALKER, in *Schuster v. Ventnor Gardens, Inc.*, 102 N. J. Eq. 357, said:

"The Court which has appointed a receiver will grant permission for a suit to foreclose a mortgage on property in his possession as receiver. *Massey v. Trenton & Camden Railway Co.*, 75 N. J. Eq. 1."

and continued:

"But I cannot see how the question of the propriety of the appointment of a receiver for the defendant company as an insolvent corporation in this case, has any bearing as to whether or not the money is due upon the mortgages held against the property of the defendant by Mr. Wilson. And if a person holds a mortgage upon property he is entitled to foreclose it (*Davis v. Flagg*, 35 N. J. Eq. 491), and can enforce the decree by execution. *W. D. Cashin & Co. v. Alamac Hotel, Inc.*, 98 N. J. Eq. 432."

### CONCLUSIONS.

For the reasons urged in the foregoing argument, the decree below entered on April 29, 1930, should be reversed and the case remitted to Chancery with instructions to dismiss the bill of complaint filed; the order of June 3, 1930, directing the receiver to sell the lands and premises of the defendant corporation free and clear of encumbrances should be reversed; the order of June 3, 1930, denying the appellant the right to fore-

close the mortgages held by her should be reversed; costs and adequate counsel fees should be awarded to the appellant, also costs and adequate counsel fees should be awarded to the appellant in this Court.

(N. B.—Italics mine.)

Respectfully submitted,

JEROME C. EISENBERG,  
Of Counsel with Petitioner-Appellant.

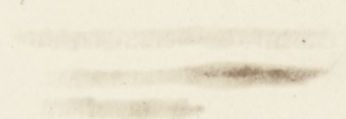
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## New Jersey Court of Errors and Appeals

Between

SAUL NEEDLE,  
Complainant,

LILLIAN E. HOFMANN,  
Appellant,

and

PERFECTION CONSTRUCTION Co., a  
corporation,  
Defendant,

ALBERT G. DERONDE, Receiver,  
Respondent.

On Appeal  
from Court of  
Chancery.

Sat Below :

HON. EDWIN ROBERT WALKER, Chancellor.  
HON. ALONZO CHURCH, Vice-Chancellor.

### BRIEF OF RESPONDENT.

#### Statement of Facts.

The respondent believes it necessary to add a few facts to the Statement of Facts set forth in the appellant's brief.

On March 26th, 1930, notice was served on the Perfection Construction Co., of an application to be made on Friday, March 28th, 1930, at four o'clock at the Chancery Chambers, before the Vice-Chancellor, Room 638, Prudential Building, New-

ark, New Jersey. On that day the solicitor for the defendant corporation appeared and contested the application.

Lillian E. Hofmann, the appellant herein, is the wife of Charles G. Hofmann, who is the president and manager of the Perfection Construction Co. The Perfection Construction Co. is a closed corporation of which he is the principal, if not the sole, stockholder.

The Receiver was apprised that the assignment of the mortgage and the mortgage to the appellant were fraudulent and given for the purpose of defrauding creditors, and the validity of said assignment of mortgage and mortgage were questioned by creditors. The Receiver desired to examine the appellant in order to determine the validity of said assignment of mortgage and mortgage, but she refused to come into this State and testify as to the consideration and legality of said assignment of mortgage and mortgage.

### POINT I.

**The right to appeal from an Order in Chancery only exists in favor of a person aggrieved by such Order.**

Section 111 of the Chancery Act (1 Cum. Sup. 269) provides that:

“All persons aggrieved by any order or decree of the Court of Chancery, may appeal from the same, or any part thereof to the Court of Errors and Appeals; \* \* \* (L. 1902, p. 545, as amended L. 1907, p. 452 (C. S. p. 450), L. 1914, C. 86, p. 133).”

“Aggrieved” means having a substantial grievance; a denial of some personal or property right. A party aggrieved is one whose pecuniary interest is directly affected by the decree; one whose right of property may be established or divested by the decree. *Raleigh v. Rogers*, 25 N. J. E. 506; *Swackhamer v. Kline’s Administrators*, 25 N. J. E. 503.

In *Beckhard v. Rudolph*, 68 N. J. E. 315, the Court held that under Chancery Act, Section 111 (P. L. 1902, p. 545) relief by appeal from Chancery is only for persons aggrieved by the order of decree in question. Relief by appeal from Chancery is only for “persons aggrieved” by the order or decree. *Eugster v. Eugster*, 89 N. J. E. 531; *Swackhamer v. Klines’ Administrators*, 25 N. J. E. 503; *Garr v. Hill*, 5 N. J. E. 639; *Kotok v. Hamilton*, 101 N. J. E. 639.

The appellant must appear to be aggrieved or she has no standing here. *Green v. Blackwell*, 32 N. J. E. 768. It is respectfully submitted that the appellant is not aggrieved by the order or orders complained of and argued under Points I, II, III, IV, and V of the appellants’ brief, and which concern the appointment of a custodial receiver and later a statutory receiver for the defendant company. The appellant retained her lien on the lands subject to determination by the Court of the priority between the lienors and the appellant, and by a sale, the liens, if any, would attach to the proceeds of the sale in a similar manner as under a foreclosure.

## POINT II.

**The record discloses appellant waived her right to have the orders concerning the appointment of a custodial receiver and statutory receiver for the defendant, if she were aggrieved by them, reviewed.**

After a receiver was appointed for the Perfection Construction Co., the appellant petitioned the Court for an Order to file a bill of foreclosure against the Perfection Construction Co., and to join as one of the defendants therein, Albert G. deRonde, the receiver, (State of Case, p. 41-43).

A party may acquiesce in an order or orders against her, or by which she is aggrieved, and thereby waive her right to have such order or orders reviewed by the Appellate Court. This is but one phase of the broader principle that one may not withhold his claim, awaiting the outcome of an enterprise, and then, after a decided turn has taken place, assert or renounce his interest in accordance with the result.

## POINT III.

**The Court below was justified in appointing a custodial receiver, and a statutory receiver, in that notice was given the defendant of an application for the appointment of a custodial receiver in accordance with the rules of the Court.**

Appellant argues erroneously on the premises that no notice was given the defendant of an application to be made for the appointment of a custodial receiver. After the bill of complaint herein was filed, notice was given on March 26, 1930, of an application to be made on Friday, March 28,

1930, at four o'clock, before the honorable Vice-Chancellor Church for the appointment of a Custodial Receiver for the defendant. On that day the solicitor for the defendant corporation appeared and contested the application.

Thus an opportunity to be heard and contest the application was given the defendant. The procedure as outlined in the Chancery Rules, Secs. 111 (a), 111 (b), and 111 (c), concerning the appointment of receivers, having been complied with, the court below did not err in appointing a custodial receiver, and later, a statutory receiver.

#### POINT IV.

**The Court below was justified in appointing a statutory receiver for the defendant corporation in that it appeared from the proofs before it that the corporation was insolvent, and could not meet its maturing debts by honest use of credit.**

The facts and circumstances upon which the insolvency of the defendant corporation was alleged fully appears in the bill of complaint and the verifying affidavit accompanying it. (State of Case, pp. 12-21. More particularly does it appear that the Corporation had no cash in bank and that checks were being returned marked "Insufficient Funds"; (State of Case, p. 14, lines 28-40) and that there were four mechanics' lien judgment creditors (State of Case, p. 15, lines 10-20; and p. 20, lines 15-35). Also that the defendant corporation could not avail itself of an honest use of credit because of the fact that its building was built over the boundary line of the defendant's land, and upon the land of another. (State of Case, p. 20, lines 1-10.)

A corporation is insolvent when there is a general inability to meet its pecuniary liabilities as they mature by means of either available assets or an honest use of credit. *Hoover Steel Ball Co. v. Schaffer Ball Bearing Co.*, 89 N. J. E. 433.

The record justifies the conclusion of the Court of Chancery that the corporation was insolvent and could not meet its maturing obligations by an honest use of credit.

### POINT V.

#### **The Court below was justified in making an Order to sell free and clear of encumbrances.**

The Corporation Act of 1896, Sec. 81, provides that:

“Where property of an insolvent corporation is at the time of the appointment of a receiver, encumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the Court of Chancery may order the receiver to sell the same, clear of encumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the Court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the Court shall direct, (L. 1896, Ch. 195, p. 303, Sec. 81; C. S. p. 1649, Sec. 81)”

In *Randolph v. Larned*, 27 N. J. E. 557, Justice Green said:

“The power to order a sale clear of encumbrances depends upon two prerequisites spe-

cified in the Statute. The legality of the liens must be brought in question and the property must be of a character materially to deteriorate in value pending the litigation."

The two prerequisites are present in this case.

This Court's attention is called to the facts that the appellant is the wife of Charles G. Hofmann, the president and manager of the Perfection Construction Co., the defendant, which is a closed corporation, of which he is the principal (or sole) stockholder. (State of Case, p. 31, lines 20-31). It was alleged that the assignment of the mortgage, and the mortgage by the corporation to the appellant, the wife of the principal stockholder, were given for the purpose of defrauding creditors. Neither the principal stockholder nor the appellant offered to testify as to the circumstances attending the assignment of the mortgage, or the making of the mortgage, and as to what monies, if any, were paid to or for the defendant corporation. There are four mechanics' lien judgment creditors that are contesting the validity and priority of the appellant's mortgages as to their liens. Receiver desired to examine the appellant as to the legality of the mortgages, but appellant refused to come into the State and testify. This fact was brought out before the Court. This was one of the factors that caused it to make the order to sell free and clear of encumbrances, being satisfied that if the order was not made the property would depreciate in value.

The building is uncompleted and work has been suspended on it for a long time. There is the Affidavit of the Receiver (State of Case, p. 24-25) stating that the rear of the building is open to the elements and that there is water in the cellar which

shows that the building is deteriorating physically and that of necessity there would be a depreciation in value. In the affidavit of Charles G. Hofmann, (State of Case, p 33, lines 19-28 he states that the apartments and stores are vacant, and the defendant company is not receiving rents.

It appearing that the two prerequisites were present, the Court below was justified in ordering a sale free and clear of encumbrances.

### Conclusions.

For the reasons urged in the foregoing argument, the decree below entered April 29, 1930, should be affirmed; the order of June 3, 1930, directing the receiver to sell the land and premises of the defendant corporation free and clear of encumbrances should be affirmed; the order of June 3, 1930, denying appellant the right to foreclose the mortgages held by her should be affirmed; that costs and counsel fees should be awarded to the Respondent in this Court.

Respectfully submitted,

BENJAMIN SHANEFIELD,  
Solicitor for and of Counsel  
with Respondent.

BENJAMIN SHANEFIELD  
and MORRIS ISSERMAN  
On the Brief.

