

NEW JERSEY COURT OF ERRORS AND APPEALS.

Mathias Last, :
Complainant-Appellant, :
vs. : On Appeal from Court
: of Chancery.
John Winkel, et als., :
Defendants-Respondents. :

Brief of the defendant, respondent,
Monroe Eckstein Brewing Company.

I have read the facts set forth in the brief of the defendants, Isador Miller and Samuel M. Nadel. The facts as set forth therein are correctly stated.

The defendant, the Monroe Eckstein Brewing Company, was the holder of a mortgage lien upon the premises set forth in the bill of complaint next prior to the mortgage of Isador Miller and Samuel M. Nadel.

The defendant, the Monroe Eckstein Brewing Company, adopts the brief of the defendants Isador Miller and Samuel M. Nadel and ask that the appeal be dismissed and the decree of the Court of Chancery be confirmed for the reasons set forth in said brief.

Respectfully submitted,

Peter Stillwell,
Solicitor for and of Counsel
with defendant-respondent,
Monroe Eckstein Brewing Company.

Complaint-Applicant,
vs.

On Appeal from Court
of Chancery.

John Winkel, et al.,
Respondent-Defendant.

John Winkel, et al.,
Respondent-Defendant.

I have read the facts set forth in the bill of
the defendant, John Winkel and Samuel M. Winkel. The facts
set forth therein are correctly stated.

The defendant, the Honorable John Winkel, Chancery
was the holder of a mortgage lien upon the premises set forth
in the bill of complaint next prior to the execution of said

Winkel and Samuel M. Winkel.
The defendant, the Honorable John Winkel, Chancery,
reports the bill of the defendant John Winkel and Samuel M.

Winkel and that the appeal be dismissed and the cause of
the Court of Chancery be continued for the reasons set forth
in this order.

Respectfully submitted,

Peter B. Stowell,
Counsel for one of Counsel
with defendant-respondent,
John Winkel, Chancery.

New Jersey Court of Errors and Appeals

Between MATHIAS LAST, Complainant-Appellant, and JOHN WINKEL, <i>et als.</i> , Defendants-Respondents.	}	On Appeal From the Court of Chancery.
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BRIEF ON BEHALF OF COMPLAIN- ANT-APPELLANT

This appeal is taken by Mathias Last, the complainant below from an order of distribution made by the Court of Chancery and set forth on page 35 of the state of the case.

The suit in which said order was made, was an ordinary foreclosure suit brought by Mr. Last, the complainant who was the holder of a first mortgage covering the mortgaged premises, dated December 12, 1912, for \$6500, mentioned in paragraphs 1, 2, 3, 4, 5 and 6 of complainant's bill (pp. 1, 2, 3, 4). Mr. Last was also the holder of another mortgage upon the same premises for \$690, mentioned in paragraph 11 of the bill. Next after complainant's said first mortgage, was a mortgage held by Monroe Eckstein Brewing Company for \$3,000, mentioned in paragraph 8 of complainant's bill (p. 4), and another mortgage of

\$1100, held by Isidor Miller and Samuel M. Nadel, mentioned in paragraph 9 of complainant's bill (p. 5), and still another mortgage held by Peter Stillwell, Trustee, for \$1875, mentioned in paragraph 10 of complainant's bill (p. 5).

In paragraph 27 of complainant's bill (p. 10), it is alleged that the mortgaged premises, if sold at a fair sale, will not bring more than \$8500, and if sold at a forced sale, will not bring more than \$7500, and that unless a receiver is appointed to collect the rents of the mortgaged premises, irreparable loss and injury will result to complainant. In paragraph 28 of complainant's bill, it is alleged:

“That said rents when so collected by said receiver as aforesaid, shall firstly be applied in the reduction of the mortgage debt of your orator (the complainant), above mentioned in paragraph 11, in the sum of \$690, with interest, and it is by virtue of your orator holding said mortgage, that he applies for the appointment of such receiver.”

To this bill of complaint is annexed the affidavit of Mr. Last, the complainant (p. 13), which, in its concluding paragraph sets forth that the mortgaged premises would not bring more than \$8500 at a fair sale, and \$7500 at a forced sale, and then proceeds as follows:

“Deponent further says that it is absolutely essential for his security, at least so far as *his mortgage in paragraph 11 of the annexed bill of complaint mentioned is concerned*, that a receiver shall be appointed with the usual powers, to collect the

rents of the said premises, and that the same should be applied in reduction of the mortgage debt, *secured by the said mortgage.*”

Upon the filing of this bill and affidavit, the Court made an order to show cause why a receiver should not be appointed (p. 15), upon the return of which an order was made for the appointment of a receiver, fully set forth on page 17 of the state of the case. Answers were filed to complainant's bill by Monroe Eckstein Brewing Company, the second mortgagee, and Isidor Miller and Samuel M. Nadel, the third mortgagee, the respondents to this appeal, in neither of which were the allegations with respect to the said receivership disputed. In due course complainant's bill was taken as confessed against all defendants (p. 29), and after the filing of the Master's report, according to the practice in foreclosure cases, a final decree was entered in the cause (p. 30), by which it was adjudged that there was due unto complainant upon his first mortgage \$7,000.-50 for principal and interest, and directing the issuance of an execution for the sale of the mortgaged premises to satisfy the said debt, interest and costs, and to pay the same to the complainant, and that in case more money should be raised by the sale, than should be sufficient to answer such payment there should be paid to Monroe Eckstein Brewing Company \$1228.03, and thereafter to said Miller and Nadel \$1125.79, and that in case more money should be raised than should be sufficient to answer such payments, the surplus be brought into Court to abide the further order of the Court.

The mortgaged premises were thereafter sold under execution issued upon said decree and a

small amount realized therefor above what was due to complainant upon his said first mortgage, leaving a deficiency upon the second mortgage of about \$300.

Pending the foreclosure proceedings and the sale of the premises, the receiver had collected and had in his possession, after deducting disbursements, \$739.15. The said receiver thereupon filed his account upon which an order to show cause was made (p. 33), and upon the return thereof, the order of distribution was made from which this appeal is taken.

The order of distribution provides that the receiver, after deducting his allowance and the allowance made to his solicitors from the net amount in his hands, he pay unto Monroe Eckstein Brewing Company \$291.31, and the balance to the defendants Isidor Miller and Samuel M. Nadel, thus giving to the complainant nothing out of the fund accumulated by the receiver out of the rents of the said premises on account of his mortgage mentioned in paragraph 11 of the bill. Complainant-appellant contends that he should first have been paid out of the said fund the amount due him upon his mortgage mentioned in paragraph 11 of his bill and that the order of distribution should have so provided.

POINTS

I

Complainant was entitled to have the monies in the receiver's hands paid to him.

From the recitals of the bill of complaint and the affidavit thereto annexed, it is manifest that complainant considered that he was amply se-

cured upon his first mortgage, for the property is therein set forth as productive of \$7500 at a forced sale, whereas the amount due to complainant at a much later date for principal and interest, by the decree, was only \$7,000.50. Complainant could only secure the appointment of a receiver, upon the mortgage recited in paragraph 11 of the bill, which was a fifth mortgage upon property. The bill clearly alleges that the appointment of a receiver is prayed for, because of complainant's holding this fifth mortgage and paragraph 28 of the bill expressly so states. The same is true of the affidavit, and it was upon this bill and affidavit alone that the appointment of a receiver was made. Complainant sought in that way to protect his fifth mortgage security, and had no other interest in applying for the appointment of the receiver. The application for the appointment of the receiver might have been made upon a separate petition, but that was not at all necessary, because all parties were served with the order to show cause made upon the said bill and affidavit, and were chargeable with notice of the contents of the bill, which was part of the files in the cause, and actually filed answers to the same, and if any mortgagee subsequent to the first desired to have the receivership inure to his benefit, could and should have applied to have the receivership extended for that purpose. But this was not done and the receiver was appointed solely upon complainant's application, to secure his fifth mortgage and for his sole benefit. The defendants do not even question complainant's rights in this respect by their answers, and the decree *pro confesso* taken against them seems to us to conclude them, for that decree constitutes an adjudication that the defendants admit complainant's rights as set out in the bill.

Furthermore the final decree provides that complainant shall first be paid the amount adjudged to be due him out of the proceeds of the sale of the mortgaged premises and that in case more money is raised by the sale thereof than shall be sufficient to make such payment, that such proceeds of the sale should be applied to pay the amount due the respondents upon this appeal. Nothing is adjudged with regard to the complainant's fifth mortgage, and this would seem to be indicative of an intent to limit the second and third mortgagees to realize the amount due them out of the proceeds of the sale of the premises and leaving the complainant with respect to his fifth mortgage to the remedy which he had already sought by the receivership.

If the complainant had been let into the possession of the mortgaged premises, and collected the rents, there does not seem to be a dispute but that he might have applied them upon his fifth mortgage, if he so chose. The very instructive case of *Leeds vs. Gifford*, 41 N. J. Equity, 464, so holds. Why is therefore the complainant's position in this case not the same? He comes into Court and in this bill and affidavit says substantially:

“I desire to be let into the possession of the mortgaged property through a person whom the Court will designate to collect the rent of the mortgaged premises for me, on account of my mortgage, which is a fifth lien upon the premises, and is therefore insecure.”

To which the Court by making the order appointing a receiver, in effect replies, “Your request is granted.”

The question here raised is new in this Court, and we believe that the Court will adopt a rule consonant with theory, and the rule followed in neighboring commercial states.

In *Washington Life Ins. Co. vs. Feishauer*, 10 Hun, 117, which is the basis of the rule in the State of New York, it is said:

“If it had not been for his application (junior mortgagee’s), and the order made upon it, the owner of the equity of redemption would, by their practical assent (prior mortgagee’s), have himself received and appropriated the rents and profits of the premises during the pendency of the action. He has intervened and prevented that, not for them but himself, and it would be inequitable now to allow him to be deprived of the advantage which his diligence alone has secured.”

In the cases of *Bradley Co. vs. Hofman*, 70 N. Y. App. Div., 77, *Trust Co. vs. Axt*, 146 N. Y. App. Div., 121, *Abrahams vs. Bercowitz*, 146 N. Y. App. Div., 563 and *Kroehle vs. Ravitch*, 148 N. Y. App. Div., 54, the same rule is applied and it is held that a junior incumbrancer is entitled to rents collected by the receiver appointed upon his application, until an order is made in the cause extending the receivership to protect the prior mortgagees, as the junior incumbrancer by his superior diligence, acquires a specific lien upon the rents, because of the appointment of the receiver to collect those rents upon his application.

In *Nesbit vs. Wood*, 56 S. W., 714, it is held that though an action be brought by a senior mortgagee for the foreclosure of his mortgage if ap-

plication be made in the same suit by a junior incumbrancer for the appointment of a receiver for the collection of the rent of the mortgaged premises, the latter is entitled to the rent collected by such receiver, because of his diligence. The senior incumbrancer, it is said probably depended upon the security of the land being sufficient to satisfy his debt. In the case at bar, the complainant as first mortgagee clearly had sufficient to satisfy his first mortgage debt and so swore in the affidavit annexed to his bill, but expressly required the receivership for his fifth mortgage security.

In *Williamson vs. Gerlach*, 41 Ohio St., 682, it is said:

“Where an incumbrancer has a receiver appointed for his benefit, and other parties to the action, who may be entitled to have the receivership extended to their liens, take no steps to have the receivership thus extended, the party procuring the appointment will be entitled to the fund produced thereby because of his superior diligence.”

To the same effect is *Scott vs. Ware*, 65 Ala., 174, and *Goddard vs. Clarke*, 81 Neb., 373. In this latter case it is said:

“Where the separate mortgages of different owners are sought to be foreclosed in the same action, it may happen that some of the parties may be entitled to the remedy of the appointment of a receiver to collect the rents of the mortgaged property, while as to others no ground for such relief exists. This may depend upon the terms of their several instruments and the

stipulations therein contained as to rents, or upon their position as to priority; the property frequently being ample to pay the senior, and insufficient to discharge the senior and junior mortgages. Again, the application for a receiver is attended with some risk and some burdens which all the parties similarly situated may not desire to incur or assume. In still other cases the rights and wishes of the parties may be the same. It follows that in some cases it may be proper to appoint a receiver to collect rents for the benefit of some mortgagees, and not for others, while in other cases the appointment should be made for the benefit of all according to their respective interests. This doctrine has frequently been recognized in the administration of the remedy.”

The question is one of commercial expediency and as a great many investors in mortgage securities in this state are from New York, the Court should, where possible, seek to make the rule uniform and adopt that applied in that state. In our own Court of Chancery in the case of *Mills vs. Alpen*, 82 N. J. Equity, 190, the Court seems to have adopted the New York rule, reasoning by analogy from the cases where the mortgagee is let into possession of the mortgaged premises by the mortgagor, in accordance with the rule laid down by Vice Chancellor Van Fleet in *Leeds vs. Gifford*, 41 N. J. Equity, 464. The Court in *Mills vs. Alpen* says:

“If the mortgagor had remained in possession and collected the rents himself, and then paid them over to the defendant,

he would have had a right to control their appropriation, and if he had failed to exercise such right, the right of appropriation would have then belonged to the defendant (the mortgagee), and he might have exercised it in such a manner as would best protect his security.”

We believe that that decision is applicable to this case, and its application would result in the proceeds of the receivership being paid to complainant on account of his fifth mortgage. Equity aids the diligent, and should have in this case granted to the complainant the benefits which were the result of his efforts alone. Did the prior mortgagees wish to be protected they could have intervened, and the question might then have been whether there was not sufficient security in the land to protect their liens, and if there was, the practice of the Court of Chancery is not to appoint a receiver upon their application. It is only in cases where the applicant's security is impaired or of doubtful value that the extraordinary remedy by receiver is granted.

The order of the Court of Chancery, therefore, upon complainant's application for the proceeds of the receivership, should have directed the receiver to pay unto complainant in the first instance the amount due him upon his mortgage in paragraph 11 of his bill of complaint and in the affidavit thereto annexed, referred to.

It is respectfully submitted that the order of distribution made by the Court of Chancery, be reversed and this Court direct the making of an order by the said Court that the said receiver in the first instance pay unto complainant the amount due him upon his said mortgage which

is a fifth lien upon mortgaged premises, and that the balance, if any there be, be paid according to the priority of liens upon the mortgaged premises.

Respectfully submitted,

GROSS & GROSS,
Solicitors for and of counsel
with Complainant-Appellant.

Isaac Gross,
Of Counsel.

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NEW JERSEY COURT OF ERRORS AND APPEALS

MATTHIAS LAST,
Complainant-Appellant,

—vs.—

JOHN WINKEL, ET ALS
Defendants-Respondents.

On Appeal from
Court of Chan-
cery.

BRIEF ON BEHALF OF DEFENDANTS- RESPONDENTS.

ISADOR MILLER AND SAMUEL
M. NADEL.

FACTS

The appellant foreclosed his first mortgage while the holder of a fifth mortgage and a judgment on the same premises, and the respondents were made defendants in the suit as holders of a third mortgage subsequent to the mortgage being foreclosed but prior to the fifth mortgage and judgment of the appellant, as appears by the bill of complaint.

Upon the day of filing the bill of complaint, the appellant secured an order to show cause.

“Why a Receiver should not be appointed of the said mortgaged premises with authority to manage and let the same, collect the rents, issues and profits thereof, and make the general and necessary repairs according to the prayer of the bill of complaint therein.”
(Case Page 15).

Service of which order was acknowledged by the solicitors of the defendants Isador Miller and Samuel M. Nadel. The only part of the prayer of the bill of complaint which concerns the order is the fourth clause which is as follows:

"4. That a receiver may be appointed by this Court to manage and receive and collect the rents of the said mortgaged premises, with full power and authority to rent the said premises and keep and maintain the same in necessary repair and condition to any person or persons at a suitable price, to be agreed on by him."
(Case Page 12).

On the return of the order to show cause the usual form of order appointing receiver was made and no mention was made therein of the application of any funds which might be derived from the receivership. The defendants Isador Miller and Samuel M. Nadel filed an answer in due time and no decree pro confesso was taken against them, and the matter was referred to one of the Vice Chancellors of the Court of Chancery and by him referred to a Master, whose report was confirmed and a final decree entered in accordance with the terms of his report, namely: that the sheriff make sale of the premises and that the first mortgagee be satisfied, and out of any balance the second mortgagee be satisfied, and any balance then remaining be paid to the defendants Isador Miller and Samuel M. Nadel, and in case more money should be raised than should be sufficient to answer such payments such surplus should be

brought into Court. There was money enough realized on the sale to pay the first mortgagee in full and to partially pay the second mortgagee, leaving nothing for the third mortgagee. Upon the receiver filing his report, there was found to be in the hands of the receiver sufficient funds to pay the second mortgagee the balance due it, and leaving a balance for these respondents. Isador Miller and Samuel M. Nadel, the third mortgagees, and an order was accordingly entered from which this appeal was taken.

POINTS.

Encumbrancers who are parties in the suit are entitled to the funds in the hands of the receiver according to the priority of their mortgages.

The only case in our state which would seem to hold to the contrary is

Longdock Mills, etc., vs. Alpen 82 Eq. (12 Buch.) 190 Chancery, but in this the prior encumbrancer was not a party in the suit brought by the junior encumbrancer wherein the receiver was appointed and the cases upon which the Court there reached its decision, are authority for a contrary doctrine on such a state of facts as are in our case.

The rule in New Jersey is well stated by Vice Chancellor Pitney in

N. J. Title Guarantee and Trust Co. v. Cone & Co. 64 Eq. (19 Dick. Ch.) 45 Page 47.

“I understand the general rule in New Jersey to be that where a receiver of mortgaged premises is appointed in a foreclosure case

to which there are several parties claiming an interest in the premises, it is not usual to determine at the time the order of appointment is made upon what account the money received shall be applied, but to retain it to be applied as each party to the suit shall appear to be entitled at the final hearing of the cause. *The mere fact that the receiver is appointed upon the application of the second or any subsequent mortgagee, who is a party to the suit, does not give him any superior right to the proceeds of the receivership.* This was distinctly stated by Chancellor Williamson in his opinion in the case of *Cartleyeu v. Hathway*, 3 Stock. 39 (at p. 42). He there says: 'Where, upon the application of a subsequent mortgagee, a receiver is appointed, it is without prejudice to any prior mortgagee or other encumbrancer, and the receiver will be directed to keep down the interest upon the prior encumbrances,' citing authorities."

The opinion in this case, and the authorities cited, disapprove and dispose of the cases in other jurisdictions which might seem to hold to the contrary of the rule so clearly stated.

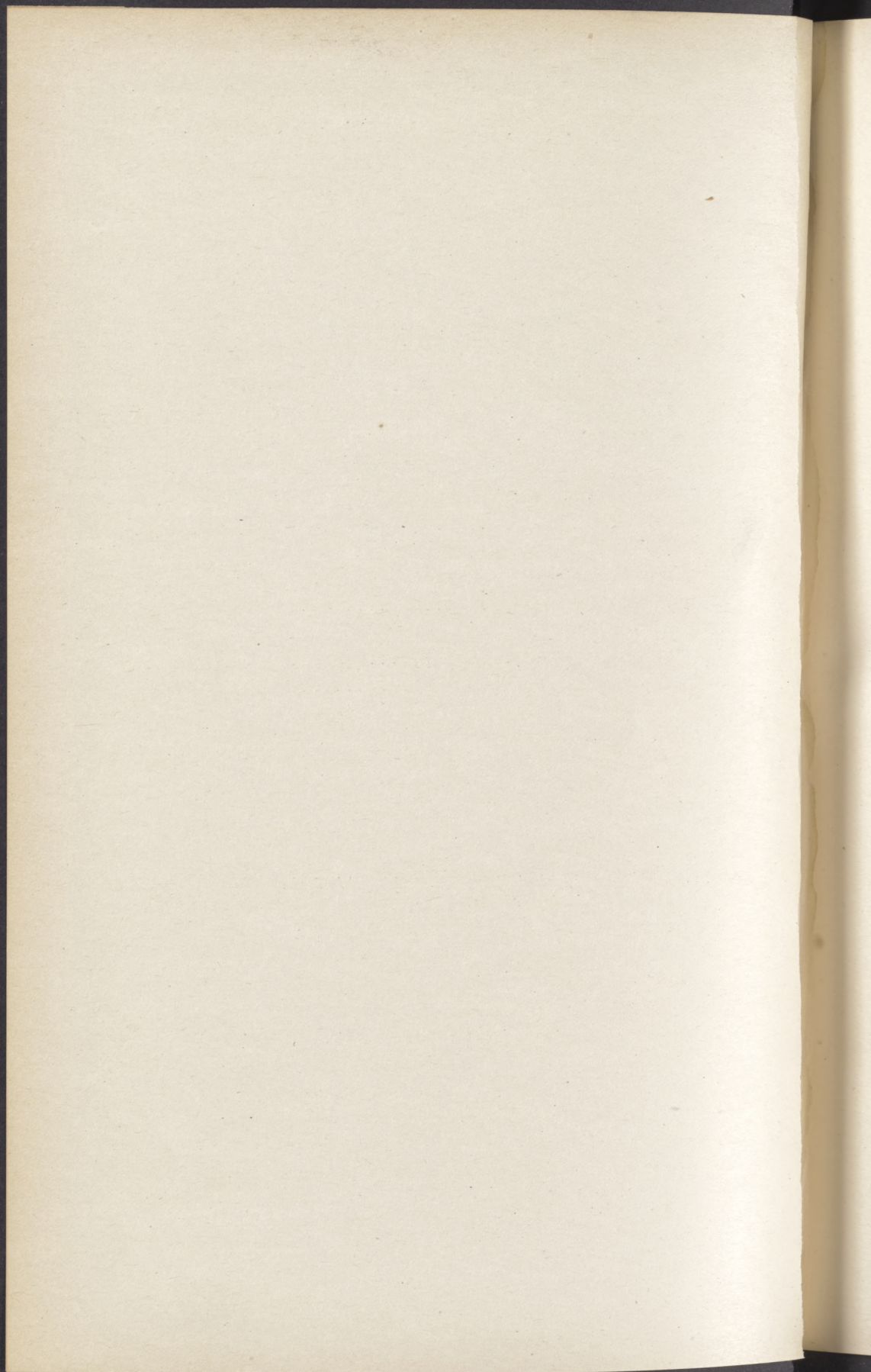
The order of the Court of Chancery should be affirmed with costs.

Respectfully submitted,

ANDREW J. STEELMAN,
Of Counsel with the respondents
Isador Miller and Samuel M. Nadel.

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New Jersey Court of Errors and Appeals

Bill of Complaint

(Filed January 21, 1915)

IN CHANCERY OF NEW JERSEY

To his Honor, Edwin Robert Walker, 20
Chancellor of the State of New Jersey.

Humbly complaining shows unto your Honor, your orator Mathias Last, of the City of Jersey City, County of Hudson and State of New Jersey.

1. That on the twelfth day of December, nineteen hundred and twelve, Kamila Winkel and John Winkel, being indebted to your orator in the sum of Sixty-five hundred Dollars by their bond dated on that day, became bound unto your orator in the sum of Thirteen thousand Dollars, to be paid to him, his executors, administrators or assigns, with a condition thereunder written, that if the said Kamila Winkel and John Winkel, their heirs, executors or administrators, shall on the twelfth day of December, nineteen hundred and fourteen, pay unto your orator, his executors, administrators or assigns the sum of 40 30

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Sixty-five hundred Dollars, with interest at the rate of six per cent per annum, payable quarterly then that bond should be void, otherwise to remain in full force and virtue.

2. That in said bond it was declared to be
 10 agreed between the parties thereto, that if said interest or any part thereof should not be paid within thirty days after the same should become due, then the whole of the principal sum mentioned in the condition thereof, should be immediately due, at the option of your orator, his executors, administrators or assigns.

3. That to secure the payment of said sum of
 20 Sixty-five hundred Dollars, with the interest, the said Kamila Winkel and John Winkel, her husband, by a deed of mortgage bearing date on the same day as said bond, conveyed to your orator, and his heirs and assigns forever, in fee simple;

ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey.

BEGINNING at a point in the Southeasterly side
 30 of Meadow Street, distant two hundred seventy-five (275) feet Southwesterly from the Southerly corner of Meadaw Street and East 21st Street (formerly 26th Street), thence Southwesterly along said side of Meadow Street forty-two and thirty-five one hundredths (42.35) feet more or less to the Northeasterly side of East 19th Street, thence Southeasterly parallel with East 21st Street and along said side of East 19th Street, ninety-seven (97) feet more or less to the bound-
 40 ary line of said parties of the first part, thence

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Easterly along said boundary line six (6) feet more or less to the northwesterly side of Avenue F, thence northeasterly along said side of Avenue F, thirty-six (36) feet more or less to lands conveyed by the parties of the first part to Rebecca Lazarus, wife of Hyman M. Lazarus by deed dated June 10, 1898, thence Northwesterly along said Lazarus land one hundred (100) feet to the place of beginning. 10

Being the same premises conveyed by Edward J. McGinley and others, the heirs at law of Bridget J. McGinley to the party of the first part by deed dated March 28, 1910, and recorded in the Hudson County Register's Office on the twentieth day of May, 1910 in liber 1064 of Deeds for said County, page 255, etc., and being also the same premises conveyed by the Central New Jersey Land Improvement Co., a corporation, to Bridget J. McGinley, by deed dated September 17 1898, and recorded September 20, 1898 in the Hudson County Register's Office in liber 706 of Deeds for said County at page 502, from which said deed of conveyance and the record thereof, the above description of the premises hereby mortgaged, is taken. 20

4. That said mortgage contained a proviso that it should be void upon payment of said sum of Sixty-five hundred Dollars, with interest, according to the condition of said bond. 30

5. That said mortgage contained an agreement of the same effect as that in said bond above set forth in paragraph 2, that the whole of the principal should become due if any part of the interest due remained unpaid for thirty days. 40

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6. That said mortgage was on the thirteenth day of December, nineteen hundred and twelve, duly recorded in the Office of the Register of the County of Hudson in book 777 of mortgages for said county on pages 473 &c., the execution of the same having been first duly acknowledged and such acknowledgment certified thereon, as required by law, to the record whereof your orator
 10 begs leave to refer for greater certainty.

7. That said bond and mortgage, to which your orator refers for certainty, are in his possession ready to be produced and proved.

8. That the said Kamila Winkel and John Winkel, her husband, on the eleventh day of December, nineteen hundred and twelve, mortgaged
 20 said lands to Monroe Eckstein Brewing Company a corporation, to secure the payment of Three thousand Dollars, with interest, which mortgage
 20 was on the seventeenth day of December, nineteen hundred and twelve, recorded in the Register's Office of Hudson County, in book 783 of mortgages for said county, page 271, to the record whereof your orator begs leave to refer for greater certainty; and the said Monroe Eckstein Brewing
 30 Company, a corporation, by virtue thereof, claims to have some interest in, or lien upon the premises so mortgaged to your orator, as aforesaid, but your orator charges and insists that the mortgage of said Monroe Eckstein Brewing Company
 30 was executed and recorded subsequent to the mortgage of your orator, and with full notice thereof, and is subject and inferior to the lien of
 40 your orator's said mortgage.

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9. That the said Kamila Winkel and John Winkel, her husband, on the twenty-third day of October, nineteen hundred and thirteen, mortgaged said lands to Isador Miller and Samuel M. Nadel to secure the payment of Eleven hundred Dollars, with interest, which mortgage was on the twenty-fourth day of October nineteen hundred and thirteen, recorded in the Office of the Register of the County of Hudson in book 811 of mortgages for said county, page 629, to the record whereof your orator begs leave to refer for greater certainty; and the said Isador Miller and Samuel M. Nadel by virtue thereof, claim to have some interest in, or lien upon the premises so mortgaged to your orator, as aforesaid, but your orator charges and insists that the mortgage of said Isador Miller and Samuel M. Nadel was executed and recorded subsequent to the mortgage of your orator, and with full notice thereof, and is subject and inferior to the lien of your orator's said mortgage.

10. That the said John Winkel and Kamila Winkel, his wife, on the first day of May, nineteen hundred and fourteen, mortgaged said lands to Peter Stillwell, trustee, to secure the payment of Eighteen hundred seventy-five Dollars, with interest, which mortgage was on the ninth day of May, nineteen hundred and fourteen, recorded in the Office of the Register of Hudson County in book 823 of mortgages for said county, page 407, to the record whereof your orator begs leave to refer for greater certainty; and that your orator has been unable to ascertain the names of the persons, if any, for whom the said Peter

Bill of Complaint

10 Stillwell acts as such trustee, although he has made diligent inquiry therefor, and the said Peter Stillwell, trustee, by virtue thereof claims to have some interest in, or lien upon the premises so mortgaged to your orator, as aforesaid, but your orator charges and insists that the mortgage of said Peter Stillwell trustee, was executed and recorded subsequent to the mortgage of your orator, and with full notice thereof, and is subject and inferior to the lien of your orator's said mortgage.

20 11. That said Kamila Winkel and John Winkel, her husband, on the first day of July, nineteen hundred and fourteen, mortgaged said lands to your orator to secure the payment of Six hundred and ninety Dollars, with interest, which mortgage was on the third day of September nineteen hundred and fourteen, recorded in the office of the Register of the County of Hudson in book 831 of mortgages for said county, page 526, to the record whereof your orator begs leave to refer for greater certainty.

30 12. That on the fifth day of August, nineteen hundred and fourteen, your orator recovered judgment in the Hudson County Circuit Court against the said John Winkel and Kamila Winkel in the sum of Seven hundred twenty-one Dollars and five cents, with costs, to be taxed, and that said judgment remains unpaid and unsatisfied, and constitutes a lien upon the mortgaged premises.

40 13. That on the ninth day of July, nineteen hundred and fourteen, Meyer and Ruh Company,

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a corporation, docketed a judgment in the Hudson County Court of Common Pleas against the said John Winkel and Kamila Winkel, which together with costs amounts to One hundred sixty-seven Dollars and forty cents, which said judgment remains uncanceled and unsatisfied of record and is claimed to be a subsisting lien upon the premises so mortgaged to your orator as aforesaid, but your orator charges and insists that the same was docketed subsequent to the execution and recording of your orator's said mortgage, and that the said mortgage is a prior lien on the premises therein mortgaged. 10

14. Your orator further shows that on the sixth day of May nineteen hundred and nine, the said John Winkel entered into a recognizance to the State of New Jersey with a condition for the appearance of one Stephen Susnoosky at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Two hundred Dollars, by reason whereof the said, the State of New Jersey, may have some interest in the said mortgaged premises. 20

15. Your orator further shows that on the third day of August, nineteen hundred and nine, the said John Winkel entered into a recognizance to the State of New Jersey with a condition for the appearance of one John Shemolsky at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Three hundred Dollars, by reason whereof the said, The State of New Jersey, may have some interest in the said mortgaged premises. 30

Bill of Complaint

16. Your orator further shows that on the third day of July, nineteen hundred and fourteen, the said John Winkel entered into a recognizance to the State of New Jersey with a condition for the appearance of one Alexander Trukowski at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Fifteen hundred Dollars, by reason whereof the said the State of New Jersey, may have some interest in the said mortgaged premises.

17. Your orator further shows that on the twenty-seventh day of June, nineteen hundred and fourteen, the said John Winkel entered into a recognizance to the State of New Jersey with a condition for the appearance of one Konstanly Pastalevicz at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Five hundred Dollars, by reason whereof the said State of New Jersey, may have some interest in the said mortgaged premises.

18. Your orator further shows that on the eighth day of December, nineteen hundred and fourteen, the said John Winkel entered into a recognizance to the State of New Jersey with a condition for the appearance of one Thomas Gambon at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Two hundred Dollars, by reason whereof the said the State of New Jersey, may have some interest in the said mortgaged premises.

19. Your orator further shows that on the eighth day of October, nineteen hundred and fourteen, the said John Winkel entered into a

Bill of Complaint

recognizance to the State of New Jersey with a condition for the appearance of one Alexander Trukowski at the Court of Quarter Sessions of the Peace in and for the County of Hudson in the sum of Fifteen hundred Dollars, by reason whereof the said the State of New Jersey, may have some interest in the said mortgaged premises. 10

20. That on or about the first day of October, nineteen hundred and fourteen, the said Kamila Winkel departed this life intestate leaving her surviving as her only heirs at law, her husband, John Winkel and her children Kamila Winkel, now sixteen years of age, John Winkel, now of the age of fourteen years, Dominick Winkel, now of the age of twelve years, Laura Winkel, now of the age of nine years, and Jessie Winkel, now of the age of seven years, to whom the estate or interest of the said Kamila Winkel in the mortgaged premises, has descended. 20

21. That on the twelfth day of December, nineteen hundred and fourteen, One hundred ninety-five Dollars, being six months' interest on the principal sum of Sixty-five hundred Dollars, secured by the said bond and mortgage given by said Kamila Winkel and John Winkel, her husband, to your orator, became due, and that the same has not been paid, and has remained unpaid for more than thirty days after the same became due, and your orator has elected and hereby elects that the whole of said principal sum shall be due. 30

22. That there is due your orator upon his mortgage hereinabove mentioned in paragraph 40

Bill of Complaint

eleven, the sum of Six hundred and ninety Dollars, with interest thereon from the first day of July, nineteen hundred and fourteen.

23. That the taxes on said mortgaged premises for the years 1912-1913 amounting to the
10 sum of Two hundred thirty-three Dollars and seventy-one cents, besides interest thereon, remains unpaid, and the taxes for the year nineteen hundred and fourteen amounting to Two hundred and seventeen Dollars and fifty-six cents remains unpaid, and the water rents of the said premises which became due on November sixth, nineteen hundred and fourteen amounting to One hundred and sixty Dollars and seventy-three cents, remains due and unpaid.

20 24. That the whole of said principal sum of Sixty-five hundred Dollars of your orator's said mortgage first above mentioned, with interest thereon from the twelfth day of June, nineteen hundred and fourteen, is due and payable to your orator.

25. That your orator has never had possession of said mortgaged premises, or received any of the rents or issues thereof.

30 26. That your orator has requested said John Winkel and Kamila Winkel, John Winkel, Dominick Winkel, Laura Winkel, Jessie Winkel, to pay him said principal and interest so due on said bond and mortgage, with which request they have refused and neglected to comply.

40 27. Your orator further shows that the said premises are rented to tenants of the said John

Bill of Complaint.

Winkel, who pay unto him the rent for the same, and that the said John Winkel has refused to permit your orator to collect the said rent, or to pay the same over to your orator in reduction of the said mortgage debt, and that the said mortgaged premises are a slender security to your orator for the payment of both his mortgages aforementioned, and that the said premises, if sold at a fair sale, will not bring more than Eighty-five hundred Dollars, and if sold at a forced sale, will not bring more than Seventy-five hundred Dollars, and that unless a receiver is appointed by this Court, to collect the rents of the said mortgaged premises with authority to rent the said premises and keep and maintain the same in repair, to any person or persons to be agreed upon by said receiver, irreparable loss and injury will result to your orator. 10 20

28. That said rents when so collected by said receiver as aforesaid, shall firstly be applied in reduction of the mortgage debt of your orator above mentioned in paragraph eleven, in the sum of Six hundred and ninety Dollars, with interest, and it is by virtue of your orator holding said mortgage, that he applies for the appointment of such receiver. 30

In consideration whereof, and in as much as your orator is remediless in the premises in the Courts of law, and can only have adequate relief in a Court of equity, and to the end:

1. That the defendants John Winkel, Kamila Winkel, John Winkel, Dominick Winkel, Laura Winkel, Jessie Winkel; Monroe Eckstein Brew- 40

Bill of Complaint

ing Company, a corporation; Isador Miller; and Samuel M. Nadel; Peter Stillwell, trustee; The State of New Jersey; Meyer and Ruh Company, a corporation, may answer, without oath, (answer under oath being waived) according to the
10 best of their respective knowledge, information and belief, all and singular the premises and each fact above stated.

2. That an account may be taken under the direction of this Court, of the amount due upon your orator's said mortgage.

3. That the defendants may be decreed to pay unto your orator, the amount so found due thereon, and your orator's costs of this suit, by a
20 short day to be appointed by this Court, and that in default thereof, they do stand debarred and foreclosed of all equity of redemption in said mortgaged premises.

4. That a receiver may be appointed by this Court, to manage and receive and collect the rents of the said mortgaged premises, with full power and authority to rent the said premises and keep and maintain the same in necessary repair and condition to any person or persons at
30 a suitable price, to be agreed on by him.

5. That the said premises may be sold by the order of this Court, and out of the proceeds of sale, your orator may be paid the amount so found due on his said mortgage, with interest thereon, and his costs of this suit.

And your orator may have such further or other relief as the nature of his case requires,
40 and as may be agreeable to equity.

Bill of Complaint

May it please your Honor, to grant unto your orator the State's writ of subpoena, issuing out and under the seal of this Court, to be directed to the said John Winkel, Kamila Winkel, John Winkel, Dominick Winkel, Laura Winkel, Jessie Winkel; Monroe Eckstein Brewing Company, a corporation; Isador Miller; and Samuel M. Nadel; Peter Stillwell, trustee; and Meyer and Ruh Company, a corporation, commanding them and each of them, to appear before your Honor, in this Court, then and there to answer the premises, and the Attorney General of the State of New Jersey being attended with a copy of this bill, may appear and put in an answer thereto, and to stand to, abide by and perform such order and decree as your Honor shall make therein. 10 20

GROSS & GROSS,
Solicitors of Complainant.
ISAAC GROSS,
Of Counsel.

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

Mathias Last, being duly sworn, on his oath deposes and says that he is the complainant in the annexed bill of complaint mentioned, and that he has read the same and that the contents thereof are true. 30

Deponent further says that he has frequently demanded payment of his mortgages in the annexed bill of complaint mentioned, and that the defendants have expressed their inability to pay the same or the interest thereon, or the taxes or water rents, and that the defendant 40

Bill of Complaint

owners of the said property are insolvent; that the said mortgaged premises are in occupation of tenants of the defendant John Winkel, and that the said John Winkel collects the rents of the same, and applies the moneys so collected by him for his own purposes, and refuses to pay any
 10 of the encumbrances on the said premises, in the bill of complaint mentioned, or the interest thereon.

Deponent further says that during the past ten years he has frequently had occasion to appraise the values of real estate in the locality of the mortgaged premises and make loans thereon, and that he is familiar with the value thereof, and that the said mortgaged premises would not
 20 bring at a fair sale more than Eighty-five hundred Dollars, and at a forced sale, more than Seventy-five hundred Dollars. Deponent further says that it is absolutely essential for his security at least so far as his mortgage in paragraph eleven of the annexed bill of complaint mentioned is concerned, that a receiver shall be appointed with the usual powers, to collect the rents of the said premises, and that the same should be applied in reduction of the mortgage debt secured
 30 by the said mortgage.

MATHIAS LAST.

Sworn and subscribed to before me this
 20th day of January, 1915.

Morris Blatt,

Commissioner of Deeds of
 Hudson County,
 New Jersey.

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Order to Show Cause*(Filed January 25, 1915.)*

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: right;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: right;">Defendants.</div>	}	10
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Upon reading and filing the verified bill of complaint in the above entitled cause, praying among other things that a receiver may be appointed, of the mortgaged premises, therein mentioned, it is on this 21st day of January, nineteen hundred and fifteen. 20

ORDERED, that the defendants John Winkel, Kamila Winkel, John Winkel, Dominick Winkel, Laura Winkel, Jessie Winkel; Monroe Eckstein Brewing Company, a corporation; Isador Miller and Samuel M. Nadel; Peter Stillwell, trustee, and Meyer and Ruh Company, a corporation, show cause before this Court on the first day of February, nineteen hundred and fifteen, at 10 o'clock in the forenoon of that day, at the Chancery Chambers, Jersey City, why a receiver should not be appointed of the said mortgaged premises, with authority to manage and let the same, collect the rents, issues and profits thereof, and make the general and necessary repairs according to the prayer of the bill of complaint therein. 30

Order to Show Cause

And it is further ordered, that in the meantime, after notice of this order, the said defendants, their agents, attorneys and servants, refrain from collecting or receiving any of the said rents and profits until the further order of this Court.

10 And it is further ordered, that a copy of this order which may be certified by the solicitors for complainant, be served on the said defendants within five days from the date hereof, and any defendant residing outside of the State of New Jersey may be served by mailing such copy to him or it, within the time aforesaid.

20 And it is further ordered that the Attorney General of the State of New Jersey be attended with a copy of said bill and order within the time aforesaid to the end that he may appear on the return of said order and be heard if he so desires.

E. R. WALKER,
C.

Respectfully advised,
John Griffin,
V. C.

A true copy.

ROBERT H. McADAMS,
Clerk.

Order Appointing Receiver*(Filed February 2, 1915)*

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: right;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: right;">Defendants.</div>	}	On Bill for Foreclosure.	10
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This matter being open to the Court by Gross and Gross, of counsel for complainant, and it appearing that a copy of the order to show cause why a receiver should not be appointed in this suit, has been duly served on the defendants, as directed in said order; and it further appearing that the prayer of the said bill of complaint for the appointment of a receiver of the mortgaged premises should be granted; it is on this first day of February, nineteen hundred and fifteen,

ORDERED that the said order to show cause be made absolute; and that George J. Wolf be and he hereby is appointed receiver in this cause, to take charge of the mortgaged premises, in said bill of complaint in this suit mentioned, and to manage the same, with power to sue for, collect and receive the rents, issues and profits thereof, (and the tenants in possession of the said premises are hereby directed to attorn and pay the rent to the said receiver); to let the said premises, or any part thereof from time to time; and to agree concerning the rents to be paid therefor,

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Answer of Monroe Eckstein Brewing Co.

and to do all things necessary for the proper care and management of said premises.

10 And it is further ordered, that said receiver give a bond to the Chancellor, with sufficient surety, for the faithful performance of his duties, in the sum of Fifteen hundred Dollars, to be approved by one of the Special Masters of this Court, and to be filed with the Clerk of this Court.

Respectfully advised. E. R. WALKER,
C.
John Griffin,
V. C.

20 **Answer of Monroe Eckstein Brewing Co.**

(Filed August 2, 1915.)

IN CHANCERY OF NEW JERSEY

30 Between MATHIAS LAST,
Complainant,
and
JOHN WINKEL, and others,
Defendants. } On Bill, etc.

The defendant, the Monroe Eckstein Brewing Company, answering the bill of complaint, says that,

40 (1) The defendant has no knowledge or information sufficient to form a belief as to the state-

Answer of Monroe Eckstein Brewing Co.

ments set forth in paragraphs 1, 2, 3, 4, 5, 6 and 7, of the bill of complaint.

(2) The defendant admits paragraph 8, and this defendant further answering paragraph 8 says, that the said Kamila Winkel and John Winkel, her husband, having become indebted to 10 this defendant, on the eleventh day of December, 1912, made and executed to this defendant, their bond bearing date the day and year last afore-said, whereby they became bound unto this defendant in the sum of three thousand dollars, to be paid to it, its successors and assigns, on demand, and interest thereon to be computed from the date thereof, at and after the rate of six per cent per annum, payable semi-annually, and that 20 in order to secure the payment of said bond, the said Kamila Winkel and John Winkel, her husband, executed and delivered to this defendant, a certain Indenture of Mortgage, bearing even date with said bond, did grant, bargain and sell unto this defendant, all the lands and premises mentioned and described in the Bill of Complaint; and the said indenture of mortgage should 30 be void upon payment of the sum of three thousand dollars and interest in the manner above set forth. And this defendant saith that there is due and owing for principal and interest upon said bond and mortgage, on August 1, 1915, the sum of Twelve hundred and nineteen dollars and sixty-three cents, no part of it having since been paid.

(3) This defendant has no knowledge or information sufficient to form a belief as to the

Answer of Monroe Eckstein Brewing Co.

statements set forth in paragraph 9, but says, that if such mortgage as therein mentioned was executed it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2.

10 (4) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 10, but says that if such mortgage as therein mentioned was executed it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2.

20 (5) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 11, but says that if such mortgage as therein mentioned was executed it was subject to and subsequent to the lien of this defendant's mortgage as set forth in paragraph 2.

30 (6) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 12, but says that if such judgment as therein mentioned was executed, it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2.

40 (7) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 13, but says that if such judgement as therein mentined was execut- ed, it was subject to and subsequent to the lien of this defendant's mortgage set forth in para- graph 2.

Answer of Monroe Eckstein Brewing Co.

(8) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 14, but says that if such recognizance as therein mentioned was executed, it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2. 10

(9) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 15, but says that if such recognizance as therein mentioned was executed, it was subject to and subsequent to the lien of this defendant's said mortgage set forth in paragraph 2.

(10) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 16, but says that if such recognizance as therein mentioned was executed, it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2. 20

(11) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 17, but says that if such recognizance therein mentioned was executed it was subject to and subsequent to the lien of this defendant's mortgage set forth in paragraph 2. 30

(12) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 18, but says that if such recognizance as therein mentioned was executed it was subject to and subsequent to 40

Answer of Monroe Eckstein Brewing Co.

the lien of this defendant's mortgage set forth in paragraph 2.

10 (13) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 19, but says that if such recognizance as therein mentioned was executed it was subject to and subsequent to the lien of this defendant's mortgage as set forth in paragraph 2.

(14) This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraph 20, 21, 22, 23, 24, 25, 26, 27 and 28.

20 And this defendant joins in the petition of the complainant that said premises be sold to satisfy all encumbrances that may be a lien upon the premises.

PETER STILLWELL,
Solicitor for the Defendant.
Monroe Eckstein Brewing Co.

**Answer of Isador Miller and Samuel
M. Nadel**

(*Filed, February 20, 1915.*)

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: center; padding: 5px 0 5px 100px;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: center; padding: 5px 0 5px 100px;">Defendants.</div>	}	On Bill etc.
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The joint and several answer of the defendants, Isador Miller and Samuel M. Nadel to the Bill of Complaint of Mathias Last, complainant: 20

(1) These defendants admit that there is, in the office of the Register of Hudson County, the record of a mortgage presumed to have been made on the 13th day of December, 1912, and recorded in Book 770 of Mortgages on page 473 etc., as alleged in Paragraph 6 of the bill of complaint, but these defendants have no knowledge as to whether the said Kamila Winkel and John Winkel were indebted to the complainant as alleged in Paragraph 1, and have no knowledge as to the contents of the bond alleged to have accompanied said mortgage, nor any of the terms or conditions of said bond as alleged in Paragraphs 1 and 2 of said bill of complaint. 30

(2) These defendants further answering say that they are informed and believe that there is in the Register's office of Hudson County, the rec- 40

Answer of Isador Miller and Samuel M. Nadel

ord of a mortgage made by Kamila Winkel and John Winkel to Monroe Eckstein Brewing Company recorded in Book 783 of Mortgages on page 271 which, purports to have been made to secure the payment of three thousand dollars, as is alleged in Paragraph 8 of complainant's bill but these defendants are informed and believe, that the said sum of three thousand dollars, and all sums of money, the payment of which is alleged to have been secured by said mortgage have been paid, and that said mortgage should be satisfied of record:

(3) These defendants further answering say, that the said Kamila Winkel and John Winkel, her husband having become indebted to these defendants on the 23d day of October 1913, made and executed to these defendants their certain bond bearing date the day and year last aforesaid, whereby they became bound unto these defendants in the sum of eleven hundred dollars, to be paid to them, their executors, administrators and assigns, on the 23d day of October, 1916, with interest thereon to be computed from the date thereof at and after the rate of six per cent per annum, and to be paid monthly on the first business day of each and every month; and should also, in the meantime and thereafter well and truly pay or cause to be paid unto these defendants, their executors or administrators equal monthly installments of twenty-five dollars on account of the principal, commencing on the first day of December then next ensuing, and payable monthly thereafter on the days when the payments of interest were due without any fraud or other delay, then

Answer of Isador Miller and Samuel M. Nadel

the said obligation to be void, otherwise, to remain in full force and virtue. And in said bond it was declared that should any default be made in the payment of said interest or installment of principal, or any part thereof, on any day whereon the same was made payable as therein expressed, and remain unpaid and in arrears for the space of thirty days, that then the principal sum or the balance thereof remaining unpaid should be immediately due at the option of these defendants or their legal representatives. 10

(4) These defendants further answering say that the said John Winkel and Kamila Winkel in order further to secure to these defendants the payment of this sum of money with interest and installments in manner aforesaid, did, by a certain indenture of mortgage bearing even date with said bond, grant, bargain and sell to these defendants all the lands and premises mentioned and described in said bill of complaint of said complainant; and the said indenture of mortgage contained a condition that the said mortgage should be void upon the payment of said sum of eleven hundred dollars with interest, in the manner as set forth in said bond and above set forth; and 20 30

(5) These defendants further say that the said indenture of mortgage was acknowledged in due form of law, and recorded in the Register's office of Hudson County on the 24th day of October 1913; all of which will more fully appear by reference to said mortgage and the record thereof, now in the possession of these defendants and ready to be produced and proven as your Honor shall direct. 40

Answer of Isador Miller and Samuel M. Nadel

10 (6) These defendants further answering say that said Kamila Winkel and John Winkel have defaulted in the payment of the installments and the interest, and same have remained unpaid for more than thirty days, and these defendants have elected the balance unpaid of the principal sum is due, and that the sum of Ten hundred and eighty-five dollars and eighty-three cents (\$1085.83), together with interest thereon at the rate of six per cent from July 1, 1914, still remains unpaid and is now due and owing to these defendants.

20 (7) These defendants further answering say that they are informed and believe that there is in the office of the Register of Hudson County, the record of a mortgage as is alleged in paragraph 10 of the Bill of Complaint, and state that said mortgage was executed and recorded subsequent to the mortgage of these defendants with full notice thereof, and is subject and inferior to the lien of the said mortgage of these defendants.

30 (8) These defendants are also informed and believe that there is in the office of the Register of Hudson County, the record of a mortgage as alleged in Paragraph 11 of the bill of complaint, but say that said mortgage was executed and recorded subsequent and subject to the mortgage of these defendants and with full notice thereof and is subject and inferior to the lien of the said mortgage of these defendants.

40 (9) These defendants further answering say that they are informed and believe that a judgment was obtained against John Winkel and Kamila Winkel, as is alleged in Paragraph 12 of the Bill of Complaint, but say that the same was ob-

Answer of Isador Miller and Samuel M. Nadel

tained subsequent to the execution and recording of the mortgage of these defendants, and that their said mortgage is prior to the lien of the said judgment.

(10) These defendants further answering say that they are informed and believe that there is docketed in the Hudson County Court of Common Pleas, a judgment as is alleged in Paragraph 13 of the Bill of Complaint but say that the same was docketed subsequent to the execution and recording of the said mortgage of these defendants, and that the said mortgage of these defendants is a prior lien thereto, on the premises described in the Bill of Complaint. 10

(11) These defendants further answering say that they have no knowledge of the matters and things set forth in Paragraphs 14, 15, 16, 17, 18 and 19, but say that if any such recognizances have been entered into, that their said mortgage is a prior lien thereto, on the said mortgaged premises. 20

(12) These defendants further answering say that they are informed and believe that said Kamila Winkel departed this life intestate, leaving her surviving as her only heirs at law, her husband, John Winkel, and her children, as alleged in Paragraph 20, of the Bill of Complaint. 30

(13) These defendants further answering say that they have no knowledge of the matters and things set forth in Paragraph 21 of the Bill of Complaint, and beg leave that the complainant be required to prove the same as he may be advised. 40

Answer of Isador Miller and Samuel M. Nadel

(14) These defendants say they have no knowledge of the matters and things set forth in Paragraph 22 of the Bill of Complaint, and beg leave to have the complainant prove the same as they may be advised.

10 (15) These defendants further answering say that they are informed and believe that there are unpaid taxes, and water rents as is alleged in Paragraph 23 of the Bill of Complaint.

(16) These defendants further answering say that they have no knowledge of the matters and things set forth in Paragraph 24 of the Bill of Complaint, and beg leave that complainant be required to prove the same as he may be advised.

20 (17) These defendants consent that a decree be made by this honorable court, for the sale of said lands and premises, in said indenture of mortgage mentioned and set forth in the complainant's bill of complaint, and that out of the money thence arising, there may be first paid to the complainant, the sum of money which may be found due him upon his said mortgage mentioned in Paragraphs 3, 4, 5 and 6 of the Bill of Complaint, and that
 30 amount of principal and interest money so due as aforesaid on their bond and mortgage with all reasonable costs and charges in this behalf sustained.

HERRMANN & STEELMAN,
 Solicitors of Defendants,
 Isador Miller and Samuel M. Nadel.

Decree Pro Confesso*(Filed, April 8, 1915.)*

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: center;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: center;">Defendants.</div>	}	On Bill etc.	10
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This cause being opened to Court by Gross and Gross, of counsel with the complainant, and it appearing that process of subpoena for the defendants to appear and answer the complainant's bill, hath been fully issued and returned served upon the defendants, and that the defendants, John Winkle, Kamila Winkle, John Winkle, Dominick Winkle, Laura Winkle, and Jessie Winkle and Robert H. McAdams, Clerk of this Court, and guardian *ad litem* of the said Kamila Winkle, John Winkle, Dominick Winkle, Laura Winkle and Jessie Winkle, infant defendants and Meyer and Ruh Company, a corporation, Monroe Eckstein Brewing Company a corporation; Peter Stillwell trustee have not, nor have any or either of them appeared and pleaded, answered or demurred to the said bill within the time limited by law, or at any other time, but that they have wholly failed and neglected so to do:

It is thereupon on this 8th day of April, nineteen hundred and fifteen, on motion of Gross & Gross, solicitors of Complainant, ORDERED and

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Final Decree

10 DECEED, that the complainant's bill be, and the same is hereby taken as confessed against the said defendants John Winkle, Monroe Eckstein Brewing Company a corporation; Peter Stillwell trustee; and Meyer and Ruh Company, a corporation, to the end, that such decree may be made against the defendants as the chancellor shall think equitable and just.

E. R. WALKER,
C.

Final Decree

(Filed, October 4, 1915.)

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IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, and JOHN WINKEL, <i>et als.</i> , Defendants.	}	Complainant, On Bill etc. Defendants.
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40 This cause being opened to the court by Gross and Gross, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants, has been duly issued and returned served by the Sheriff of the County of Hudson, and that the defendants have neglected to file any plea or demurrer or by answer, raise any issue to the complainant's bill within the time

Final Decree

limited by law, whereupon and upon reading and filing the report made in this cause by Frank W. Hastings, Jr., one of the Special Masters of this court, bearing date the 24th day of September, 1915, whereby it appears that there is due to the complainant on his mortgage first mentioned and referred to in the complainant's bill, the sum of \$7000.50 for principal and interest, and no cause being shown or appearing to the contrary, it is on this fourth day of October 1915, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED, that the said bill of complaint be taken as confessed, and that the said master's report and all the matters and things therein contained, do stand confirmed; and that the complainant is entitled to have the sum of \$7000.50 with lawful interest thereon, to be computed from the date of said report, together with his costs of this suit, raised and paid out of the mortgaged premises.

And it is FURTHER ADJUDGED AND DECREED, that the complainant's said mortgage is prior to the respective mortgages of Monroe Eckstein Brewing Company a corporation, Isidor Miller and Samuel M. Nadel, and Peter Stillwell, trustee.

And it is accordingly ordered, adjudged and decreed, that the whole of the said mortgaged premises be sold to raise and satisfy the complainant's said debt, interest and costs, and that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Hudson, commanding him to make sale according to law, of the whole of the said mortgaged premises, to satisfy the said debt, interest and

Final Decree

costs and that he pay the same to the complainant or to his solicitors and that in case more money should be raised by the sale than shall be sufficient to answer such payment, he pay in the second place to defendant Monroe Eckstein Brewing Company, a corporation, the sum of \$1228.03, with interest from the same date with its costs; and in the third place to defendant Isidor Miller and Samuel M. Nadel, or their solicitors the sum of \$1125.79 with interest thereon from the same date, together with their costs; and that in case more money should be raised by the sale than shall be sufficient to answer such payments such surplus money be brought into this court and deposited with the clerk, to abide the further order of this court, unless otherwise previously disposed of, by order of the court; and the said sheriff is to make return to this court, of his proceedings by virtue of the said writ.

And it is FURTHER ORDERED, AJUDGED AND DECREED, that the sum \$60.00 be allowed and paid to the solicitors of the complainant instead of the retaining fee now allowed to counsel by statute, and that the same be included in the taxed bill of costs, and collected with the other items of said bill.

And it is FURTHER ORDERED, ADJUDGED AND DECREED that the defendants stand absolutely debarred and foreclosed of and from any equity of redemption of and to the said mortgaged premises when sold as aforesaid, by virtue of this decree.

E. R. WALKER,
C.

Order to Show Cause*(Filed, January 6, 1916.)*

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: center;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: center;">Defendants.</div>	}	On Bill etc.	10
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George J. Wolf, receiver in the above entitled matter, heretofore appointed by this Court, having presented and filed his final report, and account from the date of his appointment, and covering the entire period of said receivership; and it appearing that the receipts of said receiver amount to \$820.50, and that his disbursements amount to \$81.35, leaving a cash balance in his hands amounting to \$739.15, and that said receiver is desirous of having his accounts passed upon and allowed, and of having his fees and allowances as receiver, and the fees and costs of his counsel, fixed and determined, and of being discharged as such receiver: It is on this fourth day of January, 1916, on motion of Gross and Gross, of counsel with said receiver,

ORDERED, that John Winkel; Robert H. McAdams, Guardian *ad litem* of John Winkel, Kamila Winkel, Dominick Winkel, Laura Winkel; and Jessie Winkel, infant defendants; Monroe Eckstein Brewing Company a corporation; Isidore

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Order to Show Cause

Miller and Samuel M. Nadel; and Peter Stillwell, trustee, show cause before the Chancellor at Chancery Chambers in the City of Jersey City on the tenth (10) day of January, 1916, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the report and account of said receiver should not be approved and allowed, and why an order should not be made fixing and determining the fees and allowances of said receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and directing the distribution of the balance of the funds in the hands of said receiver, by payment thereof to the said complainant, Mathias Last, on account of his mortgage in paragraph 11 of complainant's bill of complaint in the above entitled cause, mentioned; and why said receiver should not be discharged from further duties and liabilities in connection with said trust.

And it is further ordered that within two days of the date hereof, a copy of this order (which may be uncertified) be served upon the aforesaid parties or their solicitors, if they have appeared by solicitor.

E. R. WALKER,
C

Respectfully advised,
Vivian M. Lewis,
V. C.

Order of Distribution

(Filed, March 1, 1916)

IN CHANCERY OF NEW JERSEY

Between MATHIAS LAST, <div style="text-align: center; padding: 5px 0 5px 40px;">Complainant,</div> and JOHN WINKEL, <i>et als.</i> , <div style="text-align: center; padding: 5px 0 5px 40px;">Defendants.</div>	}	10	On Bill etc.
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This matter coming on to be heard upon an order to show cause heretofore made by this Court on the fourth day of January, 1916, in the presence of Gross and Gross, solicitors of complainant and Peter Stillwell, solicitor of defendant Monroe Eckstein Brewing Company, a corporation, and *pro se* as trustee, and Hermann and Steelman, solicitors of defendants Isidore Miller and Samuel M. Nadel, and it appearing that the said order to show cause was duly served upon all of the defendants, and it further appearing to the Court by the final account of George J. Wolf, receiver in the above entitled matter, heretofore filed, that there is in his hands for distribution the sum of \$739.15, and the said receiver claiming an allowance as such receiver, and the fees and costs of his counsel, and the said complainant claiming that the balance in the hands of the said receiver, after deducting such allowance, counsel fees and costs should be paid to him on account of his bond and mortgage in paragraph 40

Order of Distribution

11 of complainant's bill mentioned, it is on this 28th day of February, 1916, on motion of Hermann & Steelman, solicitors of defendants Isadore Miller and Samuel M. Nadel and Peter Stillwell, solicitor of defendant Monroe Eckstein
 10 Brewing Company,

ORDERED that the report and account of the said receiver heretofore filed in the above entitled matter, be and the same is hereby approved and allowed as filed, and that the said receiver be allowed as and for his services in this matter the sum of \$50, to be retained by him out of the moneys in his hands, and that he pay unto Gross and Gross, his solicitors, out of the moneys in his hands a counsel fee of \$25, and also the taxed
 20 costs upon the receivership herein, and that he pay unto Monroe Eckstein Brewing Company, or Peter Stillwell, its solicitor, the sum of \$291.31 and after deducting from the moneys in his hands as aforesaid, the said sum, together with the sum allowed to him as aforesaid, and the counsel fees and costs aforesaid, that he pay the balance remaining in his hands unto the defendants Isadore Miller and Samuel M. Nadel, or unto Hermann and Steelman, their solicitors.

30 And it is FURTHER ORDERED that upon such payment being made by the said receiver, as aforesaid, the said receiver be discharged from further duties and liabilities in connection with his said trust.

E. R. WALKER,
 C.

Respectfully advised,
 John Griffin,
 40 V. C.

Memorandum

MATHIAS LAST,

Complainant,

and

JOHN WINKEL, *et als.*,

Defendants.

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Messrs. Gross & Gross, 15 Exchange Place,
City.

Messrs. Hermann & Steelman, 15 Exchange
Place, City.

Peter Stillwell, Esq., 505 Broadway, Bayonne,
N. J.

In the above cause the complainant foreclosed 20
two mortgages, one being a first and the other
a fifth, and applied for the appointment of a
receiver under the prayer in his bill that the re-
ceiver be appointed for the benefit of the fifth
mortgagee in the first instance.

An order to show cause why such receiver
should not be appointed was served, and on the re-
turn day an order in the usual form entitled in
the cause was made appointing a receiver. There 30
is no adjudication in this order that the receiver
was to be appointed, first, for the benefit of the
fifth mortgagee.

In this view of it I conclude that the receiver
collected the rents for the benefit of the parties
to the suit, and the money should be disbursed in
the order of priority in which the several claims
are to be paid pursuant to the final decree. 40

Notice of Appeal

Leeds vs. Gifford, 41 Eq. 464;
 Long Dock Mills vs. Alpen, 82 Eq. 190;
 N. J. Title Guarantee & Trust Co. vs.
 Cone & Co. 64 Eq. 45.

January 18, 1916.

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JOHN GRIFFIN.
 V. C.

Notice of Appeal

(Filed, March 4, 1916.)

IN CHANCERY OF NEW JERSEY

20	Between MATHIAS LAST, <div style="text-align: right; padding-right: 20px;">Complainant,</div> <div style="text-align: center; padding: 0 10px;">and</div> JOHN WINKEL, <i>et als.</i> , <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	On Bill etc.
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30 The complainant hereby appeals from an order made by the Court of Chancery of New Jersey, on the 28th day of February, 1916, in the above stated cause, and from so much thereof as orders, that after the payment to the receiver herein of the amount allowed to him, and the fees and costs of his counsel, he, the said receiver, should pay unto Monroe Eckstein Brewing Company or its solicitor, the sum of \$291.31, and that he pay the balance in his hands unto the defend-
 40 ants Isidore Miller and Samuel M. Nadel, or

Petition of Appeal

their solicitors, to the Court of Errors and Appeals in the last resort in all causes.

Dated, February 29, 1916.

GROSS & GROSS,
Solicitors of Complainant,
ISAAC GROSS, 10
Of Counsel.

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

ISAAC GROSS,
Of Counsel with Complainant.

Petition of Appeal

(Filed, March 10, 1916.)

COURT OF ERRORS AND APPEALS OF 20
THE STATE OF NEW JERSEY

Between MATHIAS LAST, and JOHN WINKEL, <i>et als.</i> , Defendants.	}	Complainant, On Bill etc. Defendants.
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To the Honorable Court of Errors and Appeals, 30
in the last resort in all causes:

The petition of Mathias Last, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-eighth day of February, 1916, wherein the said Mathias 40

Petition of Appeal

10 Last is complainant, and the said John Winkel and Monroe Eckstein Brewing Company, a corporation, and Isidor Miller and Samuel M. Nadel, and others, are defendants, in this respect, to wit: that the said order adjudges that the receiver appointed herein of the rents and profits of the mortgaged premises do, out of the balance in his hands amounting to \$739.15, after deducting therefrom his allowance, and the fees and costs allowed to his counsel, in and by the said order, pay unto the defendant Monroe Eckstein Brewing Company, or its solicitor, the sum of \$291.31, and the balance after such payment, unto Isidor Miller and Samuel M. Nadel, or their solicitors.

20 And your petitioner humbly appeals from that part of the order of the Chancellor which orders, as aforesaid, upon the ground that the same is erroneous, for that the said Court should have adjudged that the entire balance of such moneys in the hands of the receiver, after deducting his allowance, and the allowance and costs of his counsel, should be paid to the complainant on account of the mortgage held by the complainant, and mentioned and described in paragraph 11 of
30 complainant's bill.

Your petitioner therefore prays that the said order of the said Chancellor may be, in the particular aforesaid, reversed, set aside, and for nothing holden.

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

GROSS & GROSS,
Solicitors of Appellant.
ISAAC GROSS,
Of Counsel.

**Answer of Monroe Eckstein Brewing
Company**

(Filed, March 17, 1916.)

COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY

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Between MATHIAS LAST, Complainant-Appellant, and JOHN WINKEL, <i>et als.</i> , Defendants-Respondents.	}	On Bill etc.
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The answer of the above named Monroe Eck- 20
stein Brewing Company to the petition of the ap-
peal of the above named appellant.

This respondent, not acknowledging all or any
of the matters which in said petition of appeal
are contained to be true, for answer thereto, nev-
ertheless, say and admit, that an order was on the
twenty-eighth day of February, last past made
and entered in the Court of Chancery in the cause
for that purpose mentioned in said petition as
is therein stated; but as to the substance and 30
form thereof, this respondent prays to refer
thereto, when the same shall be produced. And
this respondent is advised and believes that the
said order is agreeable to equity, and prays that
the same may be affirmed with costs to be adjud-
ged to this respondent.

PETER STILLWELL,
Solicitor and Counsel for the
Monroe Eckstein Brewing Company. 40

**Answer of Isador Miller and Samuel
M. Nadel**

(*Filed, March 20, 1916*)

NEW JERSEY COURT OF ERRORS AND
APPEALS

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Between MATHIAS LAST, Complainant and Appellant, and JOHN WINKEL, <i>et als.</i> , Defendants and Respondents.	}	On Bill etc.
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20 The joint and several answer of Isador Miller and Samuel M. Nadel, Respondents to the appeal of the above named appellant.

30 These Respondents, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto nevertheless say and admit that an order was made on February 28th, 1916, last past, in the Court of Chancery in a cause for that purpose mentioned in said petition, as is therein stated; but as to substance and form thereof these Respondents pray to refer thereto when the same shall be produced; and these respondents are advised and believe that the said order is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these Respondents.

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HERRMANN & STEELMAN,
 Of counsel with Respondents,
 Isador Miller and Samuel M. Nadel.

