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**Notice of Appeal.**

Filed June 15, 1931.

1

IN CHANCERY OF NEW JERSEY.

63.504

Between

LOUIS LEVY, *et als.*,

*Complainants,* } *On Bill, Etc.*

and

PASSAIC ARMS, INC., a corpora-  
tion, *et als.*,

*Defendant.*

} *Notice of  
Appeal.*

2

The petitioners, Preston B. Seaman and Philip Baer, hereby appeal from the interlocutory order made in the above entitled cause on May 11th, 1931, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Vivian M. Lewis, Vice-Chancellor of the State of New Jersey, and from the whole and every part thereof, to the Court of

3

4 *Notice of Appeal.*

Errors and Appeals in the Last Resort in All Causes.

Dated, June 10, 1931.

STEIN, McGLYNN & HANNOCH,  
Solicitors for and of Counsel with Petitioners, Preston B. Seaman and Philip Baer.

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

AARON LASSER,  
Of Counsel with Petitioners, Preston B. Seaman and Philip Baer.

Service of a copy of the within notice is hereby acknowledged this 12th day of June, 1931.

6 WEINBERGER & WEINBERGER,  
Solicitors of Receivers.

LOUIS J. PLATT,  
Solicitor of Receiver.

JAMES J. MURNER,  
Receiver of Passaic Arms, Inc.

**Petition of Appeal.**

8

Filed June 13, 1931.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

LOUIS LEVY, *et als.*,  
*Complainants,*

and

PASSAIC ARMS, IN ., a corpora-  
tion, *et al.*,  
*Defendant.**On Appeal of  
Preston B. Sea-  
man and Philip  
Baer from the  
Court of  
Chancery.  
Petition of  
Appeal.*

9

*To the Honorable the Court of Errors and Appeals  
in the Last Resort in All Causes:*The petition of Preston B. Seaman and Philip  
Baer in the above entitled cause respectfully shows  
that:

10

1. Petitioners find themselves aggrieved by an interlocutory order made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Vivian M. Lewis, Vice-Chancellor of the State of New Jersey, bearing date May 11, 1931, in a certain cause in the Court of Chancery wherein Louis Levy, *et als.*, are complainants, and Passaic Arms, Inc., a corporation, *et als.*, are defendants, in this respect, to wit that:

11

(a) The said order overrules the first, second, third, fourth, and fifth exceptions of the petitioners filed in the above cause, to the report of Special Master, Arthur S. Corbin, bearing date May 29, 1930, and filed in the above cause on July 8, 1930.

12 *Petition of Appeal.*

(b) The said order adjudges that the report of Special Master, Arthur S. Corbin, in its entirety be and it is hereby confirmed.

2. And petitioners appeal from the aforesaid order of the Chancellor upon the ground that the same is erroneous, in that:

13 (a) The said order should have sustained the first, second, third, fourth and fifth exceptions of the petitioners filed in the above cause, to report of Special Master, Arthur S. Corbin, bearing date May 29, 1930, and filed in the above cause on July 8, 1930.

(b) The said order should not have confirmed in its entirety the aforesaid report of Special Master, Arthur S. Corbin.

14 (c) The said order should not have confirmed that portion of the aforesaid report of Special Master, Arthur S. Corbin, which refused and denied to the petitioners priority of their claim for materials furnished, labor performed and services rendered, in and for the erection, construction and completion of an apartment house building at 455 Passaic Avenue, Passaic, New Jersey, subsequent to the appointment of custodial receiver in the  
15 above cause.

3. Petitioners therefore pray that the said order of the Chancellor may be reversed and set aside, on the grounds aforementioned, and that

*Petition of Appeal.*

16

petitioners may have such other relief in the premises as to this Court shall seem proper.

STEIN, McGLYNN & HANNOCH,

Solicitors for and of Counsel with Appellants.

Service of a copy of the within petition of appeal is hereby acknowledged this 12th day of June, 1931.

WEINBERGER & WEINBERGER,  
Solicitors of Receivers.

17

LOUIS J. PLATT,  
Solicitor of Receiver.

JAMES J. MURNER,  
Receiver, Passaic Arms, Inc.

18

19

20 **Answer to Petition of Appeal.**

Filed June 19, 1931.

## NEW JERSEY COURT OF ERRORS AND APPEALS.

21 Between LOUIS LEVY, <i>et als.</i> , <i>Complainants-Appellees,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendants-Appellants.</i>	}	<i>On Appeal of          Preston B. Sea-          man and Philip          Baer from the          Court of          Chancery.          Answer to          Petition.</i>
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22 These complainants-appellees, not acknowl-  
 edging 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  
 a decree made in the Court of Chancery by Edwin  
 Robert Walker, Chancellor of the State of New  
 Jersey, bearing date May 11th, 1931, in the above  
 entitled cause, is in all respects agreeable to  
 equity; that the same is not contrary to the evi-  
 dence in the cause nor contrary to law and pray  
 that the same may be affirmed, with costs to be  
 adjudged to these complainants-appellees.

WEINBERGER & WEINBERGER,  
 Solicitors of Complainants-Appellees.

23 JOSEPH J. WEINBERGER,  
 of Counsel.

Service acknowledged this 17th day of June,  
 1931

STEIN, McGLYNN & HANNOCH,  
 Solicitors for Appellants.

**Bill of Complaint.**

24

Filed March 10, 1927.

## IN CHANCERY OF NEW JERSEY.

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

Complainant, Louis Levy, of the City of Passaic,  
County of Passaic and State of New Jersey, a  
creditor of the Passaic Arms, Inc., a corporation,  
for and on behalf of himself and all the other  
creditors of said company, and stockholders there-  
of who shall come in and contribute to the expenses  
of this suit, respectfully shows:

1. That he is a creditor of the defendant com-  
pany in the sum of One thousand dollars (\$1,000)  
by virtue of a note bearing date February 10th,  
1927, which said note was executed by General In-  
dustrial Engineering Company as and for payment  
of materials delivered by complainant to property  
hereinafter described and owned by defendant com-  
pany, Passaic Arms, Inc., defendant herein, said  
debt therefore being a debt also against the Passaic  
Arms, Inc., defendant herein.

2. That the defendant company, Passaic Arms,  
Inc., was organized under the laws of the State of  
New Jersey, having its principal office in the City  
of Passaic, New Jersey.

3. That the purpose of the business of the said  
defendant, Passaic Arms, Inc., was to erect a large  
apartment house at Passaic, New Jersey, to be  
known as the Passaic Arms, which building was to  
cost in the neighborhood of Four hundred thousand  
dollars (\$400,000) and upwards.

4. That in the erection of, and in order to  
finance the said Passaic Arms, the defendant com-

28 *Bill of Complaint.*

pany entered into an agreement with the Fidelity Union Trust Company, bearing date May 1st, 1926, which provided that the said Fidelity Union Trust Company, a banking institution of New Jersey, was to advance to the defendant corporation the sum of Two hundred and fifteen thousand dollars (\$215,000) to be secured by a trust mortgage, said trustee being the Fidelity Union Trust Company; that said trust mortgage was recorded in the Register's Office of the County of Passaic on June 17th, 1926, in book A-15 of Mortgages, page 274; that on account of said trust mortgage and in accordance with its terms, the said Fidelity Union Trust Company, trustee, advanced approximately the sum of One hundred eighty-two thousand dollars (\$182,000) to date; that the lien of the trust mortgage, as appears on record, is the sum of Two hundred fifteen thousand dollars (\$215,000).

30 5. That the said defendant corporation entered into an agreement with the Empire Bond & Mortgage Corporation, a corporation of the State of Delaware, dated June 14th, 1926, by which agreement the said Empire Bond & Mortgage Corporation agreed to underwrite, sell and dispose of the said bonds of the Passaic Arms, Inc., secured by the aforementioned trust mortgage; that said agreement was recorded in the Register's Office of the County of Passaic on June 17th, 1926, in book B-33 of Deeds, page 63; that the said agreement has fallen through and the Passaic Arms, Inc., defendant herein, is as a result thereof in financial difficulties.

31 6. That the Fidelity Union Trust Company, trustee, has defaulted in the payments provided for in the above mentioned trust mortgage, which trust

*Bill of Complaint.*

32

mortgage the complainant hereby makes a part of this bill in the same manner as if it were herein fully incorporated and which said trust mortgage or a true copy thereof complainant hereby offers to produce at any time or any place that this Court may direct.

7. That by reason of the default of the said Fidelity Union Trust Company in advancing the payments agreed to be advanced by it, and by reason of the default of the Empire Bond & Mortgage Corporation to underwrite the aforementioned trust mortgage, the defendant company has been unable to meet the payments due the creditors, among them complainant, and is therefore not in a position to meet its maturing obligations at the present time, although its assets are greater than its liabilities. 33

8. That the apartment house known as Passaic Arms is not as yet finished or completed, although it was the understanding that the said apartments were to be completed on or about the first day of November, 1926. That the original intention of the defendant company was to sell each apartment under the co-operative plan system, but on account of the financial difficulties which the defendant corporation was and is now compelled to undergo, the co-operative plan was forced to be of necessity abandoned; that as a result of the aforementioned premises, the defendant company has not rented any of the apartments, and this complainant fears that the loss of said rentals will cause great financial difficulty to the defendant company. 34 35

9. That the defendant company has not sufficient money at this time to pay its creditors, in particular, complainant, the amount of money now

36 *Bill of Complaint.*

due and to become due, and the said creditors refuse to proceed any further with the work unless the defendant company pays to them the amount they are entitled to and may be entitled to from time to time.

37 10. Complainant further shows that when the aforementioned Passaic Arms is fully completed it will contain Twenty-seven (27) apartments and One hundred twelve (112) rooms, each apartment to be rented at the rate of Twenty-five dollars (\$25.00) and upwards per room.

38 11. Complainant therefore charges that the business of the defendant company has been and is being conducted at a great loss which is greatly prejudicial to the interests of its creditors and stockholders, and the said business cannot be conducted with safety to the public and advantage to the stockholders and creditors.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That the Passaic Arms, Inc., defendant herein, answer this bill and each statement therein contained.

39 2. That it may be adjudged and decreed that the business of the said corporation has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders in that its business cannot be conducted with safety to the public and advantage to the stockholders and creditors.

3. That the said corporation, its officers, agents and servants be enjoined and restrained from exercising any of its privileges or franchises and from collecting any debts, and from paying out, selling,

*Bill of Complaint.*

40

assigning or otherwise transferring any of its estate, moneys, funds, lands, tenements or effects, except as to a receiver appointed by this Court until the Court shall otherwise order.

4. That a receiver be appointed in accordance with the statute in such case made and provided and according to the equities contained herein.

5. That process may issue commanding the defendant to answer this bill of complaint and abide by and perform such order or decree as this Court may make in the premises. 41

6. That complainant may have such other relief as may be just, equitable and proper.

Your complainant will ever pray.

WEINBERGER & WEINBERGER,  
Solicitors for and of Counsel with  
Complainant. 42

State of New Jersey, }  
County of Passaic, } *ss.:*

I, Louis Levy, being duly sworn according to law, upon my oath, depose and say:

That I am the complainant in the above entitled bill of complaint instituted against the Passaic Arms, Inc., that the facts stated in the said bill are true to the best of my knowledge and belief and as to those facts alleged on information and belief, I verily believe the same to be true. 43

LOUIS LEVY.

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

J. BERNARD SALTZMAN,  
Attorney-at-law  
of N. J.

44 **Order to Show Cause and Appointing  
Custodial Receiver.**

Filed March 10, 1927.

IN CHANCERY OF NEW JERSEY.

45	Between  LOUIS LEVY, <i>Complainant,</i>  and  PASSAIC ARMS, INC., a corpora- tion,  <i>Defendant.</i>	}	<i>On Bill, &amp;c. Order to Show Cause and Ap- pointing Custodial Receiver, &amp;c.</i>
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46 This matter being opened to the Court by Wein-  
berger & Weinberger, Esqs., solicitors of complain-  
ant, and upon reading and filing the bill of the  
said complainant, and the affidavit thereto an-  
nexed,

47 It is, on this 10th day of March, 1927, Ordered,  
that the defendant, Passaic Arms, Inc., show cause  
before the Chancellor, or such Vice-Chancellor as  
shall then be sitting on the 21st day of March,  
1927, at ten o'clock in the forenoon, or as soon  
thereafter as counsel can be heard, at the Chan-  
cery Chambers in the City of Paterson, N. J., why  
a permanent receiver should not be appointed to  
take over the business of the said Passaic Arms,  
Inc., and manage and conduct said business,  
having the powers vested in him as were hereto-  
fore, and are now vested in said corporation.

And be it further Ordered, that in the mean-  
time, after notice of this order, that said defend-  
ant be and is hereby restrained from exercising  
any of its privileges or franchises, from collecting  
any debts, and from paying out, selling, assigning,

*Order to Show Cause.*

48

or otherwise transferring any of its estate, monies, funds, lands, tenements, or effects, until further order of this Court.

And be it further Ordered, that James J. Murner, of the City of Paterson, County of Passaic and State of New Jersey, be and is hereby appointed Custodial Receiver for the creditors and stockholders of the said defendant corporation, with all of the powers incident thereto, and that he do and perform all of the duties incident thereto, until the further order of the Court, upon condition that the Receiver, before he shall enter upon his duties as such Receiver, shall take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey, conditioned upon the faithful performance of his duties, to be approved by and of the Special Masters of this Court in the sum of Five thousand dollars.

49

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And it is further Ordered, that a copy of this order, certified by the solicitors of the complainant, be served on Passaic Arms, Inc., and on its stockholders, within three days from the date hereof, by mailing a letter to their last known addresses. Application may be made by any of the parties to amend or vacate the within order on three days' notice.

E. R. WALKER,

C.

51

Respectfully advised,

VIVIAN M. LEWIS,

V. C.

52

**Answer.**

Filed April 16, 1927.

## IN CHANCERY OF NEW JERSEY.

Between	LOUIS LEVY, <i>Complainant.</i> and PASSAIC ARMS, INC., a corporation, <i>Defendant.</i>	}	<i>On Bill, Etc.</i> <i>Answer.</i>
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The answer of the defendant, Passaic Arms, Inc., a corporation of New Jersey.

This defendant answering the bill of complaint, says that:

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1. Paragraph 1 is denied.
2. Paragraph 2 is admitted.

3. Paragraph 3 is denied except that it is admitted that among the objects for which this defendant was incorporated is the erection and operation of an apartment house in the City of Passaic and known as Passaic Arms.

55

4. Paragraph 4 is denied except that it is admitted that this defendant executed a certain mortgage to Fidelity Union Trust Company as a part of the plan for raising funds for the erection of its said building.

5. Paragraph 5 is denied except that it is admitted that an agreement was entered into with Empire Bond & Mortgage Corporation, which agreement is recorded in the office of the Register of the County of Passaic as alleged in the bill of complaint.

*Answer.*

56

6. Paragraph 6, 7, 8, 9, 10 and 11 are denied.

7. Further answering the bill of Complaint defendant alleges complainant is not a creditor of this defendant, that this defendant is not insolvent, that it has not suspended its business, that it has sufficient assets and ample credit to pay its just debts and to carry on its business with profit and advantage to itself and its stockholders.

57

ANDREW FOULDS, JR.

Solicitor and of Counsel with Defendant.

58

59

60

**Replication.**

Filed April 26, 1927.

IN CHANCERY OF NEW JERSEY.

61	Between LOUIS LEVY, <i>Complainant,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, etc. Replication.</i>
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Complainant by way of replication to answer filed by defendant in the above case says:

1. Complainant joins issue with the defendant.
2. Each and every allegation alleged in Paragraph 7 of said answer is denied.

62

Dated: April 18, 1927.

WEINBERGER & WEINBERGER,  
Solicitors of Complainant.

63

**Order of Reference.**

64

Filed May 11, 1927.

## IN CHANCERY OF NEW JERSEY.

Between LOUIS LEVY, <i>Complainant.</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, etc.</i> <i>Order of Refer-</i> <i>ence.</i>	65
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This matter being opened to the Court by Weinberger & Weinberger, solicitors of complainant, and it appearing that Andrew Foulds, solicitor for the defendant, Passaic Arms, Inc., a corporation, has consented hereto.

It is on this 11th day of May, 1927, on motion of Weinberger & Weinberger, solicitors of the complainant, 66

ORDERED, that the above entitled cause be referred to Hon. Vivian M. Lewis, one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and to advise what order or decree shall be made therein.

E. R. WALKER,

C. 67

I hereby consent to the entry of the foregoing order.

ANDREW FOULDS,  
 Solicitor of Defendant.

68            **Order Appointing Permanent  
Receiver.**

Filed October 13, 1927.

IN CHANCERY OF NEW JERSEY.

69	Between  LOUIS LEVY, <i>Complainant,</i>  and  PASSAIC ARMS, INC., a corpora- tion,  <i>Defendant.</i>	} <i>On Bill, etc., Order Appoint- ing Permanent Receiver.</i>
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This matter being opened to the Court by Harry H. Weinberger, Esq., of the firm of Weinberger & Weinberger, Esqs., Solicitors of Complainant, in the presence of Andrew Foulds, Jr., Solicitor of Defendant, and the Court having heard the respec-  
70            tive arguments of counsel and the affidavits introduced by them and being satisfied that the prayer of the Bill of Complainant should be granted.

It is, on this seventh day of October, 1927, ORDERED that James J. Murner of the City of Paterson, County of Passaic, and State of New Jersey, be and he is hereby appointed permanent receiver, to take charge of and conduct all the business, franchises, and privileges of Passaic Arms, Inc., a corporation, of the State of New Jersey, to have  
71            complete control and dominion over all the business, effects and holdings of said corporation, having the same powers vested in him as were heretofore, and are now vested in said corporation, with the same powers and duties as were those of the Passaic Arms, Inc., a corporation.

*Order Appointing Permanent Receiver.*

72

And it is further ORDERED that said Passaic Arms, Inc., a corporation, be and is hereby restrained and enjoined from exercising any of its privileges or franchises, and from collecting any debts, and from paying out, selling, assigning or otherwise transferring any of its estate, moneys, funds, lands, tenements, or effects, except to the receiver, appointed by this Court, until the further order of this court.

73

And it is further ORDERED that John Paul Gibson, agent of defendant, Passaic Arms, Inc., a corporation, do hereby forthwith turn over to the said permanent receiver, all leases, books of account and other books and documents in connection with the rentals of and concerning the apartment house known as "Passaic Arms" in the City of Passaic, and that the said John Paul Gibson, do immediately and forthwith render to the said permanent receiver, a true accounting, also the rents which have been collected thus far and to date, said accounting to be under oath; and that the said John Paul Gibson do also forthwith turn over to the said permanent receiver, all moneys which he now has in his possession and which have been collected as rentals or otherwise from the apartment house known as "Passaic Arms" in the City of Passaic.

74

And it is further ORDERED that a copy of this order, certified by the solicitors of the complainant, be served on Passaic Arms, Inc., a corporation, and on its stockholders, and on John Paul Gibson, within five days from the date hereof, by mailing a letter to their last known addresses.

75

It is further ORDERED that the said permanent receiver, file an additional bond with this Court in

76 *Petition and Affidavit of Claimants.*

the sum of Ten thousand dollars, and duly qualify thereunder to be approved as to form and surety by any Special Master.

E. R. WALKER, C.

Respectfully advised,

VIVIAN M. LEWIS, V. C.

77

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**Petition and Affidavit of Claimants.**

Filed November 26, 1928.

IN CHANCERY OF NEW JERSEY.

78	Between <div style="text-align: center; margin: 5px 0;">           LOUIS LEVY,  <i>Complainant,</i> </div> <div style="text-align: center; margin: 5px 0;">           and            PASSAIC ARMS, INC., a corpora-            tion,  <i>Defendant.</i> </div>	}	<i>On Bill, Etc.          Petition.</i>
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To His Honor, EDWIN ROBERT WALKER, Chancellor  
of the State of New Jersey :

79 The petition of Preston B. Seaman and Philip  
Baer respectively shows :

1. Your petitioners are each respectively President and Treasurer and are both directors and stockholders of the above named defendant, and your deponent, Preston B. Seaman, is likewise the architect employed by it in connection with the construction of its four (4) story apartment building located at Passaic, Passaic County, N. J.

*Petition and Affidavit of Claimants.*

80

2. On or about March 10, 1927, one James J. Murner was appointed Custodial Receiver of defendant on petition of the complainant herein.

3. Pursuant to the request of this Court, your petitioners proceeded with the completion of said building, at that time in an uncompleted and untenable state and caused the same to be completed and ready for occupancy and incurred certain obligations and made certain payments by reason thereof. Said payments from the 26th day of February, 1927, the time as of which the defendant started to complete said building upon default of its general contractor, the General Industrial Engineering Corporation, to and including October 15, 1927, totalled \$12,748.45, and were actually made by the petitioners. They do not include expenses paid or services rendered prior to February 26, 1927, nor expenses incurred during said above mentioned period but not yet paid by your petitioners. In addition to said amounts your petitioner, Preston B. Seaman, continued to act as architect and supervised the completion of the construction of the said building from February 16th to and including October 15, 1927, or a total of 34 weeks. In addition he acted in the capacity of general contractor of the building during said period and also assisted in obtaining and obtained numerous tenants who occupied said premises upon the completion thereof. Said services were of the reasonable value of \$500 a week or a total of \$17,000.

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82

83

4. On the 7th day of October, 1927, and when said building was practically completed and tenable, and the work of said Preston B. Seaman had

84 *Petition and Affidavit of Claimants.*

practically terminated as above set forth, said James J. Murner was by order of this Court on that day appointed Permanent Receiver of the defendant herein.

85 5. Said expenses were incurred and paid and said services were rendered for the benefit of said building of said defendant and of the Receiver thereof, and enhanced the value of said building, made it fit to be occupied by tenants and gave said estate a real value which said building did not have in the uncompleted state in which it was on March 10, 1927, and was likewise for the benefit of any creditors said defendant might have, whether general creditors or by reason of any lien or mortgage.

86 6. Said disbursements and reasonable value of said services constitute preferred claims against the assets of said defendant prior to payments to creditors, if any, and prior to any lienors or mortgagors, and constitute an expense of said Receivership incurred and paid out for the benefit of said property.

87 Your petitioners therefore pray that Your Honor decree that such expenditures and reasonable value of said services constitute preferred claims against the assets of the defendant and are proper as charges for the operation of the receivership, and are prior to the claims of creditors, if any, and of lienors and mortgagors, determine the exact amount thereof, and further pray that Your Honor may instruct James J. Murner, Receiver as aforesaid, to pay the same or provide for the payment of the same as moneys come into his possession.

*Petition and Affidavit of Claimants.*

88

And your petitioners as in duty bound will forever pray, etc.

CHARLES B. ALLING,  
Solicitor for Petitioners.

State of New York, }  
County of New York, } ss.:  
City of New York, }

89

Preston B. Seaman and Philip Baer, each being duly sworn according to law, upon his oath, depose and say: They are respectively the President and Treasurer of the defendant Passaic Arms, Inc., and are two of the directors and stockholders therein. That they have read the foregoing petition and that the facts and matters and things therein contained are true to the best of their knowledge, information and belief. The source of their knowledge in regard to the allegations of the petition arise from the fact of their being such officers, directors and stockholders as aforesaid and from the further fact that said Preston B. Seaman was in addition architect of the said building and spent his entire time in connection with the construction of the same.

90

On March 10, 1927, James J. Murner was appointed Custodial Receiver by this Court and on October 7th, 1927, such appointment was made permanent. After said appointment on March 10, 1927, by reason of the fact that the building under construction by the defendant, with respect to which the General Industrial Engineering Corporation was general contractor, was far from completed, the petitioner, Preston B. Seaman, as such architect was requested by this Court to proceed

91

92 *Petition and Affidavit of Claimants.*

and complete said building, which he did, and he and the petitioner, Philip Baer, incurred obligations in connection therewith. The amounts actually spent by the petitioners total \$12,748.45. In addition petitioner Preston B. Seaman continued to act as architect from February 26, 1927, the date as of which the General Industrial Engineering Corporation quit its contract until October 15, 1927, a period of 34 weeks, and the petitioners allege that the reasonable value of said services were \$500 a week, or a total of \$17,000. In addition to acting as architect the petitioner, Preston B. Seaman, likewise assisted in obtaining tenants for the building which was completed ready for occupancy about October 15, 1927, immediately after the appointment of the Receiver was made permanent. On March 10, 1927, the building was not only far from complete, but was likewise naturally untenable and the expenses paid as above stated and the services rendered were paid and rendered in order to complete the building, make it tenable and to give it a real value as a completed and tenable building which it did not have on March 10, 1927, when said James J. Murner was appointed as Custodial Receiver.

Your petitioners have spent said sums and rendered said services expecting that same would be repaid out of the funds of the receivership as preferred claims and as expenses of the receivership, particularly as the same was done at the request of this Court and for the benefit of the receivership and all the creditors, lienors and mortgagors of the defendant, if any, so that there may be something

*Order to Show Cause.*

96

realized for them after the determination of their claims.

PRESTON B. SEAMAN.  
PHILIP BAER.

Subscribed and sworn to before me this  
23rd day of November, 1928.

JOHN J. HICKEY,

Commissioner of Deeds, New York City.  
Bronx Co. Clerk's No. 22; Bronx Co.  
Register's No. 30021; New York  
Co. Clerk's No. 254; New York Co.  
Register's No. 9960. Commission  
expires October 23, 1930.

97

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**Order to Show Cause.**

Filed November 26, 1928.

98

IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY,  
*Complainant,*

and

PASSAIC ARMS, INC., a corpora-  
tion,

*Defendant.*

*On bill, etc.*  
*Order to show*  
*cause.*

99

This matter being opened to the Court by Charles B. Alling, Esq., solicitor for Preston B. Seaman and Philip Baer, and the Court having reading the petition and affidavit annexed hereto and made a part hereof and being satisfied, it is on this 26th day of November 1928,

100 *Order to Show Cause.*

*Ordered,* That Louis Levy, the complainant herein and James J. Murner, as Receiver of the defendant herein, show cause before the Chancellor on the 10th day of December, 1928, in the City of Paterson, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard why the prayer of the petitioners should not be granted and why the claims therein asserted should not be decreed to be preferred claims and proper expenses of the receivership herein, and why said receiver should not be directed to make payment of the same, and it is further

*Ordered,* That a copy of this order certified by the solicitor of the petitioners be served upon the attorneys for the said complainant and the said receiver within five days from the date hereof.

102 Respectfully advised,

EDWIN ROBERT WALKER, C.  
VIVIAN M. LEWIS, V. C.

103

**Order to Show Cause.**

104

Filed Nov. 12, 1929.

IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY, *et als.*,*Complainants,*

and

PASSAIC ARMS, INC., a corpora-  
tion,*Defendant.**On Bill, &c.  
Order to Show  
Cause.*

105

This matter being opened to the Court by Joseph J. Weinberger, Esq., of the firm of Weinberger & Weinberger, Esqs., solicitors for and of counsel with James J. Murner, Esq., receiver of Passaic Arms, Inc., the defendant herein, and also receiver of General Industrial Engineering Company, and it appearing to the satisfaction of the Court from the petition filed in this cause, that a private offer in writing in the sum of Fifty Thousand (\$50,000.00) Dollars has been made to the receiver by McCarter & English, Esq., attorneys acting for an undisclosed principal, for the purchase of the building known and designated as Passaic Arms, and more particularly described as follows:

106

“All that certain tract or tracts of land and premises, situate, lying and being in the City of Passaic, County of Passaic, and State of New Jersey, and more particularly described as follows:

107

“Beginning at a point on the southerly side of Passaic Avenue distant two hundred two and eighty-four hundredths (202.84) feet northeasterly from the easterly corner formed by the intersection of Brook and Passaic Avenue; and running thence (1) southeasterly and parallel with Brook Avenue

108 *Order to Show Cause.*

two hundred eighty (280) feet; thence (2) north-easterly parallel with Passaic Avenue one hundred seventy-five and sixty-six hundredths (175.66) feet; thence (3) northwesterly parallel with the first course one hundred thirty (130) feet; thence (4) southwesterly parallel with the southerly side of Passaic Avenue fifty-eight (58) feet; thence (5) northwesterly parallel with the first course one hundred fifty (150) feet; thence (6) southwesterly along the southerly side of Passaic Avenue one hundred seventeen and sixty-six hundredths (117.66) feet to the point or place of beginning, and further known as No. 455 Passaic Avenue, in the City of Passaic, County of Passaic and State of New Jersey.

which offer of Fifty Thousand (\$50,000.00) Dollars is over and above the mortgages now on the said premises, namely a first mortgage in the sum of Two Hundred Fifteen Thousand (\$215,000.00) Dollars, and a second mortgage in the sum of Thirty Thousand (\$30,000.00) Dollars, together with interest accrued thereon, and over and above all unpaid taxes and assessments with interest thereon, but free and clear of all other liens and encumbrances of every other kind and character, and especially free and clear of the lien claim of the General Industrial Engineering Company which was filed by James J. Murner, receiver of the General Industrial Engineering Company, in the sum of One Hundred Seven Thousand Four Hundred Sixty-three Dollars and Seventy-two Cents (\$107,463.72), with the further proviso that the said receiver shall apply on account of unpaid taxes all moneys remaining in the hands after the payment of the expenses of the administration of the estate and the payment of the lien claims more

*Order to Show Cause.*

112

particularly described in Schedule A attached to the original petition, up to but not in excess of forty-five per cent of each of said lien claims.

It is therefore on this 12th day of November, 1929, ORDERED that the creditors and stockholders of the General Industrial Engineering Company and the creditors and stockholders of the Passaic Arms, Inc., show cause before the Court of Chancery at the Court House in the City of Paterson, on the 27th day of November, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the said offer of McCarter & English, Esqs., attorneys, of Fifty Thousand (\$50,000.00) Dollars should not be accepted and the receiver, James J. Murner, authorized to sell the premises of Passaic Arms and execute a receiver's deed upon order of the Court to the purchaser, and upon approval and acceptance of the Court of the bid of Fifty Thousand (\$50,000.00) Dollars, the said receiver of the General Industrial Engineering Company shall be authorized to discharge the lien claim of the General Industrial Engineering Company in the sum of One Hundred Seven Thousand Four Hundred Sixty-three Dollars and Seventy-two Cents (\$107,463.72) affecting the said property of Passaic Arms, and show cause why the said receiver shall not pay out of the said sum of Fifty Thousand (\$50,000.00) Dollars, first, administration expenses as follows:

113

114

115

James J. Murner, Receiver's fees.....	\$6,500.00
Weinberger & Weinberger, Counsel fees plus taxed costs and actual disburse- ments .....	4,500.00
Louis Platt, Counsel fees.....	500.00
Arthur S. Corbin, Commissioner's fees.	1,500.00
Stenographer .....	1,000.00

116 *Order to Show Cause.*

and from the balance of the said Fifty Thousand (\$50,000.00) Dollars, a sum not to exceed forty-five per cent to the lien claim creditors mentioned in Schedule A attached to the original petition, providing there is sufficient money to pay the same, and in the event of a deficiency, that out of the general funds of the estate of Passaic Arms, Inc., the receiver shall pay the difference, and the balance if any, shall be paid on account of the taxes which are now due on the said premises.

And it is further ORDERED that a copy of this rule to show cause be mailed to the creditors and stockholders of the General Industrial Engineering Company, and the creditors and stockholders of the Passaic Arms, Inc., or their attorneys, by unregistered mail to their last known address or by publishing a copy of this order to show cause every day for period of one week exclusive of Sunday in the Passaic Daily News, Passaic Daily Herald and in the Paterson Morning Call, within five days from the date of this order.

And it is further ORDERED that a copy of the petition upon which this order to show cause is based be filed in the Court of Chancery and there to remain open for inspection.

Respectfully advised,

119 E. R. WALKER, C.  
VIVIAN M. LEWIS, V. C.

**Order for Sale.**

120

Filed January 7, 1930.

IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY, *et als.*,  
*Complainants.*

and

PASSAIC ARMS, INC., a corpora-  
tion,*Defendant.**On Bill, etc.**Order for Sale.*

121

An order to show cause having been made herein on January 8, 1929, why James J. Murner, the Receiver herein should not sell certain premises therein described, free and clear of all liens, claims, mortgages and encumbrances, at public sale, and said order having been continued from time to time until this day; and it further appearing that on November 12, 1929, another order was made herein on the petition of said James J. Murner, Receiver, directing the creditors and stockholders of General Industrial Engineering Company, and the creditors and stockholders of Passaic Arms, Inc., to show cause before this Court on November 27, 1929, why a certain offer in the sum of \$50,000 made by McCarter & English, Esqs., attorneys, acting for an undisclosed principal, for the premises therein described, being also the premises described in the said order to show cause of January 8, 1929, hereinbefore referred to, should not be accepted and distributed as set forth in the petition upon which the said order to show cause was made, and also in the said order to show cause of November 12, 1929, which said order has been continued from time to time until this day; and it

122

123

124 *Order for Sale.*

- further appearing that both above mentioned orders to show cause were duly served, and/or advertised as therein directed; and the said two orders to show cause now coming on to be heard on motion of Weinberger & Weinberger, solicitors for and of counsel with the said James J. Murner, Receiver of Passaic Arms, Inc., and in the presence of Henry C. Whitehead, appearing for Campbell-Morrell & Co., Anderson Lumber Co., N. J. Engineering & Supply Co., H. R. Isenberg & Co., Pittsburg Plate Glass Co., and various other creditors, and in the presence of Samuel Travers, Esq., appearing for Bergen Building Block Co., Nicholas O. Beery, Esq., appearing for National Electric Co., Winfield J. Schleich, Esq. appearing for Cornelius Sluisman, Collins & Corbin, Esqs., appearing for Abendrote Bros., Daniel L. Campbell, Esq. of Hood, Lafferty & Campbell, Esqs., appearing for Fidelity Union Trust Company, Trustee, Joseph J. Weinberger of Weinberger & Weinberger, Esqs., appearing for Kramer Lumber Corp., Central Supply Co. and Isaac Choler; Louis J. Platt, Esq. of counsel for James J. Murner, Receiver aforesaid; Augustus C. Studer, Jr. of McCarter & English, Esqs. appearing for Empire Bond & Mortgage Co. and the said undisclosed principal making a bid of \$50,000 referred to hereinabove; and Borden D. Whiting, of Whiting & Moore, Esqs., appearing for Preston B. Seaman, Philip Baer and Passaic Arms, Inc.; and it further appearing that the said McCarter & English, attorneys for an undisclosed principal have submitted in open court a modification of their bid of \$50,000, namely: by offering the sum of \$50,000 for the said premises, subject to the first and second mortgages, taxes and assessments, now liens upon

*Order for Sale.*

128

the said premises, but free and clear of all other liens and claims whatsoever, including the expenses of the receivership; and the said bid having been considered and argued in open court in the presence of the above named counsel, and the court being of the opinion that it is for the best interest of all parties that the said bid of \$50,000 as modified should be accepted by the Receiver,

129

It is on this 7th day of January, 1930,

ORDERED, ADJUDGED AND DECREED that James J. Murner, Receiver of Passaic Arms, Inc., accept the offer of \$50,000 as modified, made by McCarter & English, Esqs., attorneys acting for an undisclosed principal and that upon the payment of said sum of \$50,000 in cash the said receiver forthwith execute and deliver his deed to the premises described in the orders to show cause upon which this order is based; and it is further

130

ORDERED, that the said Receiver's deed shall recite that the said premises are conveyed subject only to the existing first and second mortgages, taxes and assessments, but free and clear of any and all liens, mechanic's liens, claims and encumbrances whatever; and it is further

ORDERED, that upon the payment of the said sum of \$50,000 to the Receiver and the Receiver's delivery of his said deed, and the recording of the same, the Register of Deeds and mortgages and/or the Clerk of the County of Passaic are authorized and directed to cancel all mechanic's liens and lispendens of record, if any, against the said premises thereby conveyed and herein referred to; and it is further

131

132 *Order Amending Order Appointing  
Permanent Receiver.*

ORDERED, that the liens, if any, shall attach to the proceeds in the hands of the Receiver, there to remain subject to the further order of this court  
Respectfully advised,

E. R. WALKER, C.

VIVIAN M. LEWIS, V. C.

133

**Order Amending Order Appointing  
Permanent Receiver.**

Filed January 7, 1930.

IN CHANCERY OF NEW JERSEY.

134	Between LOUIS LEVY, <i>et als.</i> , <i>Complainant,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, Etc.,          Order Amending          Order Appoint-          ing Permanent          Receiver.</i>
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135 It appearing to the Court that on or about March 10th, 1927, one James J. Murner, of the City of Paterson, was appointed custodial receiver of Passaic Arms, Inc., the defendant above named, and thereafter by an order of this Court on October 7th, 1927, was appointed permanent receiver thereof, and it further appearing that the said order of October 7th, 1927, there was no express recital that the said Passaic Arms, Inc., was then adjudged insolvent, although this Court did on October 7th, 1927, so find and adjudge,

*Order of Reference to Special Master.*

136

It is on this 7th day of January, 1930, on motion of Weinberger & Weinberger, Esqs., solicitors of the complainants above named, and also of the said James J. Murner, as permanent receiver of the said Passaic Arms, Inc., *Ordered*, That the said order of this Court dated October 7th, 1927, be and is hereby amended *nunc pro tunc* by inserting in the second paragraph thereof, after the words, "It is on this 7th day of October, 1927," and before the words "ORDERED," the words *Ordered and Adjudged* that the defendant, Passaic Arms, Inc., a corporation of New Jersey, is insolvent, and it is further" Respectfully advised,

E. R. WALKER, C.

VIVIAN M. LEWIS, V-C.

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**Order of Reference to Special  
Master.**

138

Filed January 7, 1930.

IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY, *et als.*,  
*Complainant,*

and

PASSAIC ARMS, INC., a corpora-  
tion,  
*Defendant.*

*On Bill, Etc.*  
*Order of*  
*Reference*  
*to a Special*  
*Master.*

139

This matter coming on to be heard before the Honorable Vivian M. Lewis, Vice Chancellor, to whom this cause has been duly referred to, and

140 *Order of Reference to Special Master.*

sufficient reason appearing therefor, it is on this 7th day of January, 1930,

141 Ordered, that Arthur S. Corbin, Esq., one of the Special Masters of this Court, forthwith take testimony with reference to the claims of Messrs. Seaman and Baer for monies alleged to have been expended in the completion of the building known and designated as No. 455 Passaic Avenue, Passaic, New Jersey, and also for alleged services rendered in the supervision of the completion of said building by the said party or parties, and it is further

Ordered, that the Special Master report with all convenient speed his findings in said matter to the Court.

E. R. WALKER,

C.

142 Respectfully advised,

VIVIAN M. LEWIS,  
V. C.

143

**Supplemental Order of Reference to  
Special Master.** 144

Filed February 21, 1930.

IN CHANCERY OF NEW JERSEY.

Between LOUIS LEVY, <i>Complainant,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, etc., Supplemental Order.</i>	145
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This matter coming on to be heard before Hon. Vivian M. Lewis, Vice-Chancellor, on application of Joseph J. Weinberger, Esq., counsel for James J. Murner, Receiver, and consent being given to the entry of the within supplemental order on February 20, 1930, before Arthur S. Corbin, Esq., Special Master, to whom this matter was duly referred on the 7th day of January, 1930, and sufficient reason appearing. 146

It is on this 21st day of February, 1930, ORDERED, that Arthur S. Corbin, Esq., one of the Special Masters of this Court, forthwith continue to take testimony with reference to the claims of Messrs. Seaman & Baer for money alleged to have been expended in the completion of the building known and designated as No. 455 Passaic Avenue, Passaic, N. J., and also for alleged services rendered in the supervision of the completion of said building by the said party or parties; 147

And it is further ORDERED, that the said Special Master report to this Court his findings as to the validity of said claims, the amount of money to be

148 *Report and Intermediate Account of  
James J. Murner, Receiver.*

awarded, if any, to said claimants, and also to report on the priority of said claim;

And it is further ORDERED, that the said Special Master report with all convenient speed his findings in said matter to this Court.

Respectfully advised,

E. R. WALKER, C.

149 VIVIAN M. LEWIS, V. C.

**Report and Intermediate Account of  
James J. Murner, Receiver.**

Filed July 2, 1930.

IN CHANCERY OF NEW JERSEY.

150	Between LOUIS LEVY, <i>et als.</i> , <i>Complainants,</i> and PASSAIC ARMS, INC., a corporation, <i>Defendant.</i>	}	<i>On Bill, Etc.          Report and          Intermediate          Account of          James J. Murner,          Receiver.</i>
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151 *To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:*

The petition of James J. Murner, of the City of Paterson, County of Passaic, and State of New Jersey, respectfully shows that:

1. Petitioner is the receiver duly appointed by this Court by an order made in the above entitled cause on the 10th day of March, 1927, and hereby submits his account of his administration of the rents, issues and profits of the lands and premises

*Report and Intermediate Account of* 152  
*James M. Murner, Receiver.*

placed in his hands as such Receiver, pursuant to the directions of said Order.

The following is a summary of petitioner's said account:

Petitioner charges himself with.....	\$83,469.50	
Petitioner prays allowance for.....	30,837.58	
	<hr/>	153
Balance in hands of Receiver.....	\$52,631.92	

Petitioner therefore prays that his said intermediate account may be approved by this Court, and that this Court may fix the allowance to be made to him.

JAMES J. MURNER,  
 Receiver.

State of New Jersey, }  
 County of Passaic, } ss.: 154

I, James J. Murner, of full age, being duly sworn according to law, upon my oath, depose and say:

That the matters and things set forth in the within report and intermediate account are true to the best of my knowledge, information and belief.

JAMES J. MURNER. 155

Sworn to and subscribed before me this  
 2nd day of July, 1930.

EPHRAIM F. SCHWARTZ,  
 An Attorney-at-Law of New Jersey.

156 *Report and Intermediate Account of  
James M. Murner, Receiver.*

*James J. Murner, Receiver Passaic Arms, Inc.*

Intermediate Account, May 1, 1930.

	Receipts.	Disbursements.
Rents .....	\$33,459.50	.....
157 Refund Armstrong Coal Co. ....	10.00	.....
Sale of property.....	50,000.00	.....
Advertising .....	.....	\$362.86
Administration .....	.....	1,354.50
Heat and light.....	.....	7,043.62
Janitor .....	.....	3,387.50
Fees .....	.....	48.60
Taxes .....	.....	11,602.62
158 Supplies and fixtures, re- frigerators, etc. ....	.....	4,863.34
Insurance .....	.....	1,713.82
Water .....	.....	460.72
	\$83,469.50	\$30,837.58
Balance on hand.....	.....	52,631.92
	\$83,469.50	\$83,469.50
159 Balance on hand—Hobart Trust Co...		\$1,182.16
Balance on hand—U. S. Trust Co....		749.76
Cash collected and retained by Wein- berger & Weinberger.....		700.00
Certificates of deposit, U. S. Trust Co.		50,000.00
		\$52,631.92

**Report of Special Master.**

Filed May 31, 1930.

IN CHANCERY OF NEW JERSEY.

Between LOUIS LEVY, <i>et als.</i> , <i>Complainants,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, Etc.,          Report of          Special Master          on Claims of          Messrs. Seaman          and Baer.</i>	161
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In pursuance of an order made in the above entitled cause on the 21st day of February, 1930, whereby it was referred to the undersigned, one of the Special Masters of this Court, to take testimony with reference to the claims of Messrs. Seaman & Baer, herein, and to report to this Court my findings as to the validity of said claims, the amount of money to be awarded, if any, to said claimants, and also to report on the priority of said claims. 162

I do respectfully report that I have been attended by William L. Bowman, Esq., solicitor for Preston B. Seaman and Philip Baer, Joseph J. Weinberger, Esq., of the firm of Weinberger & Weinberger, Esqs., and Louis J. Platt, Esq., for James J. Murner, Receiver for General Industrial Engineering Company, Henry C. Whitehead, Esq., solicitor for Campbell, Morrell & Co., and Nicholas O. Beery, Esq., solicitor for National Electric Co., and in their presence have examined into matters referred to me, and 163

I do further report that on March 10th, 1927, James J. Murner was appointed Custodial Receiver for the said Passaic Arms, Inc., that said claimants were notified of the making of said order

164 *Report of Special Master.*

and the appointment of said Receiver within a day or two after March 10th, 1927; that said James J. Murner was appointed permanent Receiver on October 7th, 1927; that said claimants both before and after the appointment of said custodial receiver and said permanent receiver, caused labor to be performed and materials to be furnished for, in and about the completion of the building known as Passaic Arms, Inc., at No. 455 Passaic Avenue, in the City of Passaic, New Jersey, and rendered services in the supervision of said work; that for labor performed, materials furnished and services rendered prior to the appointment of said custodial receiver, said claimants have valid claims as general creditors of said Passaic Arms, Inc.; that for the labor performed, materials furnished and services rendered after the appointment of said custodial receiver, said claimants have no valid or legal claims, the performance of said labor, furnishing of said materials and the rendering of said services not having been authorized by this Court.

I further find and report that from the evidence produced before me the said claims of Messrs. Seaman and Baer are valid claims as general creditors of the said Passaic Arms, Inc., for the sum of \$1,584.54; that said claimants are not entitled to priority or preference over the claims of other general creditors of the said Passaic Arms, Inc., there appearing in the testimony produced before me no legal or equitable basis for priority or preference with respect to the said claims of Messrs. Seaman and Baer.

All of which is respectfully submitted this 29th day of May, 1930.

(Signed) ARTHUR S. CORBIN,  
Special Master in Chancery.

**Order Nisi to Confirm Master's Report.** 168

Filed July 8, 1930.

IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY *et als.*,  
*Complainants,*

and

PASSAIC ARMS, INC., a corpora-  
tion,

*Defendant.*

*On Bill, &c.*  
*Order Nisi to*  
*Confirm Master's* 169  
*Report.*

This matter being opened to the Court by Joseph J. Weinberger, Esq., of the firm of Weinberger & Weinberger, Esqs., solicitors of the receiver, James J. Murner, and upon reading and filing the report made in this cause by Arthur S. Corbin, Esq., one of the Masters of this Court, bearing date the 29th day of May, 1930; 170

It is, on this 8th day of July, 1930, on motion of Joseph J. Weinberger, Esq., of the firm of Weinberger & Weinberger, solicitors of the receiver, *Ordered* that the said Master's Report and all matter and things therein contained do stand in all things ratified and confirmed, according to the true tenor and meaning thereof, unless the defendants shall, within eight days from the service of this order 171 show good cause to the contrary.

By the Court.

FERD GARRETSON, Clerk.

Order served July 21, 1930, on Stein, McGlynn & Hannoeh, solicitors for claimants-appellants.

172      **Exceptions to Report of Special  
Master.**

Filed July 24, 1930.

IN CHANCERY OF NEW JERSEY.

63-504

173	Between, LOUIS LEVY, <i>et als.</i> , <i>Complainant.</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, etc.          Exceptions to          Report of Spe-          cial Master.</i>
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174      The claimants, Preston G. Seaman and Philip Baer, hereby except to the report filed in this cause by Arthur S. Corbin, one of the special masters of this Court, which report bears date May 29, 1930, and which report was filed on July 8, 1930, and notice of the filing of which report and rule Nisi was given to the defendant on July 21, 1930, for the following reasons:

175      1. The said special master has failed to find that the claimants Preston G. Seaman and Philip Baer were entitled to the sum of \$29,000.00 for labor and material furnished by them in the erection and construction of the apartment house building located at 455 Passaic Avenue, Passaic, New Jersey, which apartment house is commonly known as the "Passaic Arms."

2. The said special master erred in that he failed to find that the claimants Preston G. Seaman and Philip Baer, who had furnished labor and material in connection with the erection, construction and completion of the apartment house commonly known as the "Passaic Arms", after the ap-

*Exceptions to Report of Special Master.*

176

pointment of the custodial receiver, were entitled to a claim for such labor and materials furnished, to the extent of \$29,000.00.

3. The said special master erred in that he failed to find that the claimants Preston G. Seaman and Philip Baer, who had furnished labor and material in connection with the erection, construction and completion of the apartment house commonly known as the "Passaic Arms," after the appointment of the custodial receiver, were entitled to a claim for such labor and materials furnished, to the extent of \$29,000.00 and failed to find that the amount of such claim should have priority and should be paid first out of the funds in the hands of the receiver. 177

4. The said special master erred in finding that the claims of said Preston G. Seaman and Philip Baer are valid claims as general creditors of the said Passaic Arms for the sum of \$1,584.84 and erred in finding that said claimants are not entitled to priority and preference over the claims of the other general creditors of the Passaic Arms. 178

5. The said master should have found that the said claimants Preston G. Seaman and Philip Baer were entitled to a claim in the sum of \$29,000.00 and that said materials and labor were furnished after the appointment of the receiver herein, and at the request and with the consent of the said receiver, and that the said claimants were entitled to be paid the amount of their claims first out of the moneys in the hands of the receiver. 179

STEIN, McGLYNN & HANNOCH,  
Solicitors for Preston G. Seaman and Philip Baer.

180

**Order Allowing Account.**

Filed August 18, 1930.

IN CHANCERY OF NEW JERSEY.

181	Between LOUIS LEVY <i>et als.</i> , <i>Complainants,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>Defendant.</i>	}	<i>On Bill, etc.</i> <i>Order Allowing</i> <i>Account.</i>
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182 This matter being opened to the Court by Joseph J. Weinberger, of the firm of Weinberger & Weinberger, Esqs., solicitors for James J. Murner, Esq., Receiver herein, and the Court having inspected the petition and intermediate account on file of the said James J. Murner, Receiver, in the above entitled matter, and sufficient proof having been ad-  
 183 duced, showing service of order to show cause heretofore allowed on the 2nd day of July, 1930, on all creditors and persons mentioned in said order, and due notice of this application having been given to all persons interested, and sufficient reason appearing therefor,

It is on this 29th day of July, 1930,

183 ORDERED, That the intermediate account of James J. Murner, Receiver, filed in this cause be and the same is hereby allowed.

And it is further ORDERED, that the Receiver, James J. Murner, be and he is hereby awarded the sum of \$3,500.00 for his services as such Receiver; and that Messrs. Weinberger & Weinberger, solicitors for the complainant herein and counsel for the said Receiver be allowed the sum of \$3,500.00, to-

*Order Confirming Report of Special Master.* 184

gether with their disbursements and taxed costs, and that Louis J. Platt, Esq., associate counsel for the said Receiver, be allowed the sum of \$500.00 for his services.

And it is further ORDERED, that a copy of this order be served upon the said Receiver within ten days from the date hereof.

Respectfully advised, 185

E. R. WALKER, C.

VIVIAN M. LEWIS.

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**Order Confirming Report of Special Master.**

Filed May 15, 1931.

63-504 186

IN CHANCERY OF NEW JERSEY.

Between LOUIS LEVY <i>et als.</i> , <i>Complainants,</i> and PASSAIC ARMS, INC., a corpora- tion, <i>et als.</i> , <i>Defendants.</i>	}	<i>On Exceptions          to Report of          Arthur S. Corbin,          Special Master.          Order.</i>	187
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Exceptions having been filed by Stein, McGlynn & Hannoeh, Esqs., solicitors of Preston B. Seaman and Philip Baer to the report of Arthur S. Corbin, one of the Special Masters of this Court on a matter which was referred to him by orders of this Court made on the 7th day of January, 1930, and the 21st day of February, 1930, and the matter

188 *Order Confirming Report of Special Master.*

coming on to be heard in the presence of Henry C. Whitehead, Esq., of counsel for various creditors, and Louis Platt, Esq., and Joseph J. Weinberger, Esq., of the firm of Weinberger and Weinberger, Esqs., of counsel for James J. Murner, Receiver, and Aaron Lasser, Esq., of the firm of Stein, McGlynn & Hannoeh, Esqs., solicitors of the defendants, Messrs. Seaman and Baer, and the Court having considered the evidence and arguments of

189 counsel thereon,

It is on this 11th day of May, 1931, ORDERED :

That the first exception to the Master's report be and the same is hereby overruled.

That the second exception to the Master's report be and the same is hereby overruled.

190 That the third exception to the Master's report be and the same is hereby overruled.

That the fourth exception to the Master's report be and the same is hereby overruled.

That the fifth exception to the Master's report be and the same is hereby overruled.

It is further ORDERED that the report of Special Master Arthur S. Corbin in its entirety be and it is hereby confirmed.

191 And it is further ORDERED that a copy of this order, which may be certified by Weinberger & Weinberger, Esqs., or Louis Platt, Esq., of counsel for the receiver, be served upon Preston B. Seaman and Philip Baer or their solicitors, Stein, McGlynn & Hannoeh, Esqs., by registered mail within ten days from the entry of this order.

Respectfully Advised,

VIVIAN M. LEWIS, V. C.

**Testimony Before Arthur S. Corbin, 192  
Special Master, Beginning Feb-  
ruary 20, 1930.**

Filed July 8, 1930.

IN CHANCERY OF NEW JERSEY

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*Between*  
LOUIS LEVY, *et als.*,  
*Complainants,*  
and  
PASSAIC ARMS, INC.,  
*Defendant.*

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193

Passaic, New Jersey, February 20, 1930.

Before ARTHUR S. CORBIN, Special Master in  
Chancery of New Jersey.

Appearances:

William L. Bowman, Esq., for Preston B. Sea- 194  
man and Philip Baer;

Henry C. Whitehead, Esq., for Campbell, Mor-  
rell & Co.;

Nicholas O. Berry, Esq., for National Electric  
Co.;

Weinberger & Weinberger, Esqs., for the Re-  
ceiver James J. Murner;

Louis J. Platt, Esq.

195

PRESTON B. SEAMAN, called as a witness, being  
first duly sworn by the Master, testified as fol-  
lows:

*Direct examination* by Mr. Bowman.

Q Mr. Seaman, during 1926 and 1927, were you  
the President of the Passaic Arms, Inc.? A I  
was.

196 *Preston B. Seaman, direct.*

Q And had you been employed by that Corporation as Architect, for the preparation of plans and the supervision of the erection of an apartment house by that Corporation in Passaic? A I was, yes.

Q And had you acted as such architect up to the time that the Contractor—what was the name?

A The General Industrial.

197 Q (continuing) The General Industrial Engineering Corporation refused to continue its construction work? A I was.

Q As architect, did you serve said contractor with a notice to proceed? A I did.

Q Do you recall the date of that notice? A I think it is the 18th of February, 1927.

Q And pursuant to that architectural notice did the contractor proceed with any work thereafter?

A He did not, no.

198 Q Thereafter, was there a meeting by the officers of the Passaic Arms, Inc., the mortgagee, the Empire Bond & Mortgage Company and the Metropolitan Insurance Company which had given a bond of completion? A There was.

The Special Master: Is that the Metropolitan Casualty Company?

Mr. Bowman: Yes. Is that the name? Metropolitan Casualty?

199 The Special Master: Yes.

Q Was there any result of that meeting of those three corporations? A Yes.

Q What was it? A They decided on certain things which were incorporated in the minutes of the Passaic Arms.

Q Mr. Seaman, what became of the original minute book of the Passaic Arms, Inc.? A The

*Preston B. Seaman, direct.*

200

original minute book of the Passaic Arms, Inc., was given to Mr. Murner, and is in Mr. Weinberger's office.

Q That was after he became—— A The permanent receiver, yes.

Q The permanent receiver. Before turning over said original minute book, did you proceed to do anything with respect to making a record of such minutes? A Yes.

201

Q What did you do? A I made an exact copy at the suggestion of Mr. Foulds.

Q Who was Mr. Foulds? A Mr. Foulds was the former attorney of the Passaic arms.

Q I show you a certain book—— A It is certified to in the front.

Q (continuing) I show you a book and ask you if that is the duplicate minutes prepared, as you have so testified? A Yes, those are the duplicate minutes.

202

Mr. Whitehead: Has the minute book been subpoenaed here this morning?

Mr. Bowman: No.

Mr. Whitehead: Why not? That is a simple matter.

Mr. Bowman: It was neglect on my part, if you want to put it that way.

Mr. Weinberger: If it is correct, we have no objection.

203

Mr. Bowman: Yes.

*By Mr. Bowman.*

Q I show you inside the duplicate what purports would be a duplicate of the minutes of February 21, 1927, and ask you if that bears the actual signature of Philip Baer, Secretary? A That is Mr. Baer's signature, yes.

204 *Preston B. Seaman, direct.*

Q And does the waiver of notice contain the actual signatures of the three directors? A Yes, mine, Mr. Baer's, and Mrs. Baer's.

Mr. Bowman: Subject to verification with the original minutes, I now offer these minutes in evidence.

205 Mr. Weinberger: Is it the minute of February 21st?

The Special Master: Of the Passaic Arms, Inc., (Pages 46, 47, and 48 of the minutes referred to were received in evidence and marked S & B-1).

Mr. Weinberger: With that reservation we have no objection.

206 Q At the time this resolution was passed, did the Passaic Arms, Inc., have any bank account or funds in its own name anywhere? A None whatever.

Q At that time had the Empire Bond and Mortgage Company refused to advance any more money under their mortgage contract? A They did, yes, at that time.

Q Now pursuant to that resolution what did you do? A I waited for three days; then I started to finish it—— to complete the building.

207 Q Acting in what capacity A As the architect.

Q Was there any contractor on the job? A No contractor at all.

Q Then you were actually acting as architect and builders, were you not? A Architect and builder, yes.

Q Were disbursements made in connection with the labor and securing materials? A There were, yes.

*Preston B. Seaman, direct.*

208

Q Who furnished the money? A It was furnished between Mr. Baer and myself.

Q Did you keep a weekly record of the purchase of materials and the payment of labor in the completion of that work? A I did, yes.

Q Were those records made weekly by you? A They were made weekly by me, yes.

Q And have you such records in your possession? A I have copies of them. 209

Q When were the copies made? A The same time the originals were made.

Q So that those were actually duplicate originals? A Duplicate originals, yes.

Q What became of the first copy? A It was sent to Mr. Foulds.

Q Who was Mr. Foulds? A Mr. Foulds was the former attorney of the Passaic Arms.

Q And were those records kept by you in pursuance to instructions from him? A Yes. 210

Q Will you produce your duplicate originals? A Yes, sir.

(Witness produced paper referred to)

Q Now, with those to refresh your recollection, can you state the amounts that were actually spent weekly for labor and materials?

Mr. Weinberger: We would like to have that itemized, each item that he claims, now. 211

Mr. Bowman: All right.

Q Commence, then, and state each item of expense which you or Mr. Baer paid and what the item was, and if you can, the date of the payment; in other words, the week in which the payment was made.

Mr. Weinberger: And whether it was paid by cash or check.

212 *Preston B. Seaman, direct.*

Mr. Bowman: All right, and whether it was paid by cash or check.

Mr. Weinberger: And to whom.

Mr. Bowman: All right.

A The week ending February 26, 1927, the labor was \$196.60.

213 Mr. Weinberger: Just a little slower. How much was the labor?

The Witness: \$196.60. Material \$80. Cromwell & Reid for insurance—

Mr. Weinberger: Wait a minute, as you give each item.

Q After you have given the item, state whether it was paid by cash or check?

A The others were by check. Cromwell Reid & Company was paid by Baer's check, \$300; that was for insurance.

214

*By Mr. Weinberger.*

Q What kind of insurance? A Mr. Baer will explain that. I don't know.

Q What is \$196.60 for? A Labor.

Q For what? A Carpenters, Mason.

Q Have you got it itemized? A No, I haven't got it itemized.

Q What? A No. I haven't got it itemized.

215 *By Mr. Whitehead.*

Q Have you any receipts? A The receipts were sent to Mr. Foulds. There were no receipts for labor at all.

*By Mr. Weinberger.*

Q Then, there were no receipts for \$196.60?  
A No. That was labor.

*Preston B. Seaman, direct.*

216

Q Have you any payroll sheet or anything to show for that? A No, nothing except what is here.

*By Mr. Whitehead.*

Q You don't know who the laborers were, do you? A I know some of them; I don't know all.

*By Mr. Weinberger.*

217

Q The material was \$80. Is that a bill? A Whatever bills there were for material—I don't know whether I got bills for that. I don't think I have. I gave all the bills to Mr. Foulds.

Q Did you ask Mr. Foulds for the bills back? A He gave them to Mr. Mulvaney.

*By Mr. Bowman.*

Q Answer this question. Did you ask for them. A Yes. 218

*By Mr. Weinberger.*

Q You say he gave them to Mr. Mulvaney? A Yes.

Q Did you ask Mulvaney for them? A He is now dead.

Q Did you ask him while he was living? A No.

Mr. Bowman: I object to that. 219

Mr. Weinberger: I want to know were these bills are.

The Special Master: Let him go along now and do one job at a time. Go ahead.

Q Go ahead. A Now, we go to the week ending March 5th.

Q What year? A 1927. The labor was \$291.60; supplies, \$24; hot water system, \$106;

220 *Preston B. Seaman, direct.*

then, the three carpenters in the store room and basement and carpenters' work throughout the building. Hinges for the store room. Steam fitter and helper on hot water system. Now, you go to the week ending March 12th: Labor, \$248.50; supplies \$16.50, hot water system, \$55; Van Dyk furniture Company \$200 by check, Philip Baer, H. L. Butler, \$41.34, paid in check by Mr. Baer.

221 Braverman—

Q \$200 Van Dyk, by Mr. Baer? A Yes.

Q \$41.40? A \$41.34 was a check to H. L. Butler of Newark.

Q By whom? A Baer. Braverman Marble Works, \$25 paid by check, Mr. Baer. Now, I have a memorandum here, three carpenters to lay and finish floors, one removing temporary fence; that was a wire fence that went around the building; laying oak flooring. Van Dyk—that's the Van Dyk furniture people, on account of kitchen cabinet, by Mr. Baer, H. L. Butler, bronze saddles for outside doors; that was by Baer. Braverman Marble Works for vestibule. I have receipted bills for these.

Q Where are they? A Here. Now, we go to the week ending March 19, 1927.

*By Mr. Bowman.*

223 Q Before we go on with that I am going to break in here: Did anything happen on or about March 11th or 12th, that you recall, 1927? A March 11th or 12th?

Q Well, March 10, 11, or 12th? A I was working in the building. I came downstairs and found a padlock on the front door.

Q All right. After you found the padlock on the front door, what did you do. A I called up Mr. Foulds.

*Preston B. Seaman, direct.*

224

Q Then did you thereafter receive a copy of this order (indicating)? A I think Mr. Foulds received a copy; I didn't.

Q Well, you thereafter saw it? A Yes, I saw it.

Mr. Bowman: I ask that it be received in evidence. It is the order appointing the custodial Receiver dated March 10th, 1927. I offer it subject to verification with the original. 225

(The paper referred to was received in evidence and marked S&B-2).

*By Mr. Bowman:*

Q Now, then, did you and Mr. Foulds visit Vice-Chancellor Lewis at any time around this time? A Yes, on the following Monday morning.

Q Monday morning? Can you tell us that date? I think it was March 12th—no; the 14th. 226

A The 13th, I think it was. It was Monday, anyway.

Q Well, the Monday following the 10th of March? A Yes.

Q On the Monday following March 10th, 1927, you and Attorney Foulds visited Vice-Chancellor Lewis, where? A At the Vice-Chancellor's Courtroom in Paterson.

Q Give us the conversation that happened. A Mr. Foulds and I went to Paterson together 227 and we went to the Vice-Chancellor's courtroom, and the Vice-Chancellor was busy with some other work. Mr. Foulds waited until he was through, and after everybody else completed their business, Mr. Foulds and I went to the Vice-Chancellor; just what Mr. Foulds said I can't recall now, but Vice-Chancellor Lewis said that Mr. Weinberger had come into his courtroom late in the afternoon

228 *Preston B. Seaman, direct.*

and said that the building known as the Passaic Arms had been abandoned by both the contractor and the owners and thieves had broken in and stolen very much of the property, and he also said that if a custodial receiver was not appointed forthwith the old building would be carried away.

Mr. Foulds told him such a statement was not truthful and he went on and told him why it was  
229 not truthful. To substantiate that he called upon me to corroborate him.

Mr. Lewis said, "Who is this man?" Mr. Foulds said, "This is Mr. Seaman, the architect."

Mr. Lewis said, "You heard me say what Mr. Weinberger said. Is that statement true?"

I said, "There isn't a bit of truth in it, Vice-Chancellor; not one bit."

So, he said, "I am going to ask you some questions about the thing."

230 Q Go ahead. I want the questions as you recollect them. A He asked me if we worked on the building—if we would complete the building. I said, "Yes."

He said, "Have you got money enough to complete it?" I said, "Yes, we will get money to pay the bills as we go along."

He said, "All right; you go and finish the building." I said, "Mr. Foulds, you bring Mr. Weinberger in court tomorrow morning." And with  
231 that I came away and left Mr. Foulds in the courtroom. He said he had to go to the sheriff's office on some other business, and I came to Passaic and went on finishing the building."

Q Do you know whether or not Mr. Foulds did bring Mr. Weinberger in before Vice-Chancellor Lewis as the Vice-Chancellor suggested? A I know as a positive fact he did not.

*Preston B. Seaman, direct.*

232

Q He did not? A He did not, no. I can explain that, if you want me to.

Q All right. Why not? A Mr. Foulds telephoned me that he had made an appointment to meet Mr. Weinberger and talk the thing over; would I meet him at his office the next morning. That was Tuesday following the Monday. I met Mr. Foulds at his office and we went to Mr. Weinberger's office, and Mr. Weinberger wasn't there when we got there. He came in shortly after.

233

Q Which Mr. Weinberger was this? A Harry.

Q You knew that Weinberger & Weinberger were acting as attorneys for the Receiver at that time? The Custodial Receiver? A I think so, yes.

Q You had been so advised by Mr. Foulds? A Yes.

Q And that is why you and he went to visit Mr. Weinberger? A Yes, sir.

234

Q And during the course of the conversation, did Mr. Weinberger verify that fact? That he was acting as attorney for the Custodial Receiver? A Yes.

Q Was anything said in conversation with Mr. Harry Weinberger at that time respecting the completion of the building? A Yes.

Q What was the conversation respecting the completion of the building? A That the Passaic Arms was going on to complete the building at their own expense.

235

*By the Special Master.*

Q Who said that? A Mr. Weinberger was told that. Mr. Foulds told Mr. Weinberger that we were going on finishing the building.

236 *Preston B. Seaman, direct.*

*By Mr. Bowman.*

Q Did Mr. Weinberger make any answer to that statement? A I don't know if he made any answer to it. Whatever it was was in that conversation Mr. Foulds——

237 Q Well, I just asked you whether Mr. Weinberger made any answer to that statement. Now, after these two conversations that you have related, did you then continue to go on with the completion of the work? A I did.

Q Of the building? A Yes.

Q Now, go on and tell us week by week of the disbursements that you made for labor materials. A I think we are down to the week ending March 19th. The labor was \$195.80. The material was \$33.

238 *By Mr. Weinberger.*

Q Just a minute. \$195? A Yes, \$.80. Material, \$33; supplies, \$37; hardware, \$66.67 was paid by check by Mr. Baer. Now, my memorandum of that is that carpenters were working generally throughout the building. They were here and there and every place repairing buckled floors and laying oak flooring, and the material was being—— new oak flooring about to be laid.

239 *By Mr. Bowman.*

Q What was the condition of the building as of March 10th, 1927? A Do you mean relative to its completion?

Q Relative to its rentability. What was the condition with respect to completion and rentability and occupancy? A I can only answer that this way: I made a report to the Empire Bond &

*Preston B. Seaman, direct.*

240

Mortgage Company, of which this is a copy (indicating).

Q This was a report as of February 18th, 1927?

A Yes.

Q Will you state that that report is accurate and truthful? A Yes, it is accurate and truthful.

Mr. Bowman: I offer that in evidence.

Mr. Berry: Where is the original of it? <sup>241</sup>

Mr. Bowman: Given to the Empire Bond and Mortgage Company.

(The paper referred to was received in evidence and marked S & B 3).

*By Mr. Bowman.*

Q In that report you have stated that in your opinion the building was 65 per cent completed. What percentage would you say had been completed between the date of that report, February 18th, and March 10th, 1927? A Why, that is pretty hard to state, Mr. Bowman. That is only a few days, and much of the work that was installed had to be taken out and other work put in. There is an entirely new hot water system in there. The old system was taken out entirely. It was no good. <sup>242</sup>

Q There was no work done, as I understand it, excepting that what you have testified here, namely, the work which was done during the week of February 26th and the week following? A Yes. <sup>243</sup>

Q So that your testimony respecting work done between February 18th and March 10th was the only work that was done towards completing this uncompleted work? A Yes.

Q In buying materials did you receive at times slips of the nature of this one which I show you as of March 15th, 1927? A Yes.

244 *Preston B. Seaman, direct.*

Mr. Bowman: I state that that be marked in evidence.

(The paper referred to was received in evidence and marked S&B 4.)

Q Now, after March 12, 1927, what did you do with such slips? A New slips that I had of that nature were attached to the report given to Mr. Foulds.

Q Now then, have you asked Mr. Foulds for such slips and any other data that you turned over to him respecting the doing of this work? A I have, yes.

Q And what did he advise you respecting the same? A Mr. Foulds said that he transmitted all these to Mr. Mulvaney together with many other papers; all the moving papers in this case.

Q Did you make inquiries at Mr. Mulvaney's office respecting those documents? A I did, yes.

Q When was this inquiry made? A Probably four months ago.

Q What is that? A Probably four months ago.

Q About four months ago. Do you recall whom you spoke to? A Why, I spoke to different people. I don't know their names. One was a young man. I think two were young ladies. I don't know their names.

Q Was this after Mr. Mulvaney died? A After Mr. Mulvaney was dead, yes.

Q What did these people in Mr. Mulvaney's office advise you respecting these documents? A They said they would make a systematic search for them. They didn't know where they were; that Mr. Mulvaney took some things home; they didn't know whether it was in the office or in his house,

*Preston B. Seaman, direct.*

248

but they would make a systematic search for them.

Q Since that time, have you made further inquiries respecting whether or not they found them?

A I have, yes.

Q When was this inquiry made? A Probably two months ago.

Q What were you advised at that time? A That they had no record of them and they couldn't be found.

249

Q Now, proceed with your last work that you said was done. A I gave you March 19th, didn't I?

Q Yes. Take up the week ending March 26th. A Week ending March 26th: Labor, \$297.60; lumber and hardware—

*By Mr. Weinberger.*

Q How much? A \$297.60.

Q Week ending what? A Week ending March 26th. Labor, \$297.60; lumber and hardware, \$39. My note is here carpenters were shelving closets, putting in hugs and floors, and cleaning up rubbish.

250

Week ending April 2nd: Labor, \$341.20; materials, \$195.40; carpenters in general building, masons on retaining walls and platforms and the walk for outside entrance; lumber for shelving and flooring; cement and sand for concrete.

251

Week ending April 9th, 1927: Labor, \$192.40.

Q What week is this? A April 9th.

Labor, \$192.40; National Electric, \$71.90; that was paid by check by me which I have not been able to get, but I can get it; I got it, and they will say I paid it. They returned me a bill that is here (indicating); some was for extra work and some was on the contract. We finally settled the extra work for \$71.90, and I gave a check for that.

252 *Preston B. Seaman, direct.*

Then there was a locksmith for furnishing keys for the apartment. There were no keys furnished for the apartment. Material \$46; supplies for janitor, \$19. There is a notation there: "Carpenters"; it just says "Carpenters".

253 National Electric: That was a night light; there were day lights but no night lights. The locksmith was for keys. Lumber and hardware and so forth; "Brooms, shovels, paste and so forth," I don't know what the paste was. It says, "Brooms, shovels, paste and so forth."

Week ending April 16th, 1927: Labor, \$192.40; materials, \$38; kitchen dressers, \$60. Coal for hot water, \$11.80; Richardson-Boynton, \$142.50, paid by a check. I also have a receipt for it because it was sent c. o. d. and I paid it. Arlington Shade Company—

254 *By Mr. Whitehead.*

Q What check? A I think it was Mr. Baer's check. It doesn't tell. I have the receipt for it here. There is a receipt for it. There is his bill and his recommendation as to the hot water. Do you want to see that?

*Mr. Bowman.*

255 Q No, that is all right, as long as it is on the record. Go ahead. A (continuing) Arlington Shade Company was paid by check of Mr. Baer. The note: Carpenters finishing apartment and front vestibule doors, putting down bronze saddles. By the way, I have a receipt for the bronze saddle, too. K.D. that means kitchen dressers. Richardson-Boynton new hot water heater on account; shades for windows on account; receipt to Mr. Foulds.

*Preston B. Seaman, direct.*

256

Week ending April 23, 1927: labor, \$192; material, \$20.50; mason and helper, \$72. It says carpenters were finishing the apartment; some locks not fitted there need striking plates, buckled floors, moulding for panels, door bumpers, and so forth; materials, glass for the French doors, sand paper, also cement and sand for the foundation for the new heater; mason and helper, building foundation for the new heater; bills to Mr. Foulds.

257

Week ending April 30, 1927; labor, \$192.40; material, \$13; steam fitter and helper, \$85; legal, \$6; carpenters finishing apartment, mostly in 1-E; Alterations; materials, jigs and blocks, plaster. Steam fitter and helper; new hot water system; legal affidavits.

Now, week ending May 7; labor, \$192.40, material, \$6; lumber for cabinet, \$54; lighting bulbs, \$10; carpenters on outside doors and transoms; hardware for same; lumber; special kitchen cabinet over the refrigerator; electric bulbs for lighting halls, 10 watt.

258

Week ending May 14: carpenters, \$192.40; supplies, \$25; mason and helper, \$136.40; material, \$34; steam fitter and helper, \$80; John Parkins for janitor on account, \$50; that was paid by a check.

*By Mr. Bowman.*

Q Whose check is that? A Mr. Baer's; all, with the exception of one was Baer's. That is, the only check I issued on the job.

259

*By Mr. Whitehead.*

Q That is Richardson-Boynton? A No. My check was the National Electric for \$70 and some odd cents. My note on that was Carpenters to set doors, buck floors, and so forth; supplies, mason,

260 *Preston B. Seaman, direct.*

materials, jigs and blocks, partitions and patching and plaster; jigs and blocks to complete plaster—patching plaster in the hot water system; that was a steam fitter and helper on the new hot water system; John Parkins, one-half months salary for janitor; that was paid by check.

Now we come to May 21: labor \$192.40; lumber and hardware, \$9.32; cartage \$7; mason and helper \$136.40; The Fidelity Union was paid, \$1161.88, by check. Van Dyk was paid by a check \$213; D. Schumer was paid by a check, \$65; Cochran Printing Company was paid by a check, \$9; carpenters were working generally throughout the apartment; lumber in connection with the above, express on heater, mason and helper, jigs and partitions and patchings; Fidelity Union with interest, Van Dyk Furniture Company on account, and D. Schumer was for sheet material for the doors.

262 *By Mr. Bowman.*

Q What is that item of the Fidelity Union Trust Company for? A That was for interest.

Q Mortgage interest? A Mortgage interest.

Q All right. A It was paid by check. Baer paid that.

Now we go to May 28: labor \$192.40; lumber \$115; hardware, \$18; express, \$2.75; coal, \$23; Public Service, \$13.40 paid by a check. All these checks were by Baer. Carpenters were finishing the apartment and fixing the leaks in the roof, and also erecting kitchen dressers; lumber for kitchen dressers and shelving; hardware for the above; express delivery—delivery for screens and windows, window screens; coal for heating and drying building. That was about the time we got the heating apparatus all unhooked and Mrs. Leonard was taken with pneumonia, and we hooked on boiler

*Preston B. Seaman, direct.*

264

up to give her heat. The Public Service was gas and electricity.

*By Mr. Berry.*

Q At that time you had tenants in the house? A Yes. They started coming in the last week in April. Our labor bill was \$185.60. Hardware for garage door \$18. Wire glass for garage door, \$10; mason material, \$87; carpenters were working in apartments and also on the garage. Hardware was for hanging the garage doors. The window glass was for garage doors; the mason materials was cement, plaster and partition blocks.

June 11, week ending; carpenters, \$192.40; lumber and hardware, \$18; steam fitter and helper, \$90; janitor, one-half month, \$50; carpenters finishing—

*By Mr. Whitehead.*

266

Q Was that by check? A No; that wasn't paid by check. Finishing buckled floors, fitting doors and locks, roof, and so forth; materials for the moldings; they were panels on the walls. Steam fitter repairing leaks in the radiators and disconnecting gas ranges. The gas ranges were all charged. They were taken down and others put in. \$50 is the salary for janitor's salary.

Now, we go to week ending June 18, 1927: \$192, carpenters; labor, fixing lawns for seeding, \$15; six clothes post and setting, \$25; lumber in basement, \$36. I think that was to build a milk rack; incidentals, nails, and screws, \$18; Albert Gatano, planting grass seed; that was paid by check, \$63.43. My note is that many of the floors were badly buckled from dampness. They had to be taken up and relaid. Some new flooring required; lumber in

268 *Preston B. Seaman, direct.*

basement for milk rack, nails, and so forth, and screws for same; carpenter work in connection with the gas and electric meters. He was putting up shelves for the meters to be placed on.

Week ending June 25, 1927; carpenters, \$192.40; material and labor, in making garage; that was marking spaces on the floor; coal for hot water, \$23; painting and labor—in addition, painting and  
269 labor marking garage spaces.

*By Mr. Whitehead.*

Q You did not give the amount of that. A What?

Q Marking the spaces in the garage. A \$22.50.

June 2: carpenters, \$192.40; removal of rubbish, \$7.50; materials for S., \$23; I guess that is material and supplies, \$23; Arlington Shade Company, \$50, paid by a check. My notation is cutting  
270 stairs, trim in front of apartment doors that was cast iron between doors. We had to cut them off. That was done with an ax saw; fixing swollen and warped floors and mouldings and sanding same.

July 9; labor, \$183.60; supplies, \$11.75; plumbing, \$89; that was in connection with putting on escutcheons, lids on water closet seats.

*By Mr. Weinberger.*

271 Q You claim you paid this money? A Yes, sir.

My note is: Carpenters relaying oak floors and rehanging doors; materials was oak flooring and nails; plumbing was repairing leaks and valves and bolts; water closet seats.

Now, we go to July 16: Carpenters \$192.40; supplies, \$26; cartage, \$750; Carpenters work in

*Preston B. Seaman, direct.*

272

the apartments, refitting doors; hardware, erection with small dressers and shelving closets; shelves and hardware; removal of rubbish.

July 23: Carpenters, \$192.40; plumbing, \$75; material and supplies, \$30; Goodman, paint and varnishes. That was paid by a check, \$112.50. He supplied—I don't know just what he supplied. I got his receipt for it some place. Carpenters finishing and sanding floors; plumbers set radiators; nails, sheets and express for outside doors; Goodman material; they did the finishing of the floors; copy and voucher to Mr. Foulds. 273

July 30, 1927: Carpenters, \$192.40; material and supplies, \$38; masons, \$60; Carpenters finishing and filling floors; outside doors; removal of material to basement; material and supplies were springs for the outside doors; the masons were patching plaster in halls and apartments.

August 6, 1927: Of course, I am giving you the week ending each time—Carpenters, \$192.40; supplies, \$37; Carpenters on the floors, ceilings and floor plates for heating risers. The supplies were nickel, floor and ceiling plates. 274

August 13, 1927: Carpenters, \$192.40; material and supplies, \$27; incidentals, \$14. The carpenters were painting ceiling and finishing floors. Supplies were paint brushes and putty knives. Incidentals were rubber door bumpers.

Week ending August 20: Carpenters, \$192.40; material and supplies, \$34; carpenters finishing and filling oak floors; one man on the roof repairing, material, 50 pounds of roof cement. Glass beads for French doors. 275

Week ending August 27; Labor, \$192.40; material, \$22.75. The above was in connection with the tenants for the different apartments as required by the different tenants.

276 *Preston B. Seaman, direct.*

Week ending September 3: Labor, \$192.40; material, \$38, in connection with the apartments, giving extra kitchen dressers and closet-shelves and hooks; copy to Mr. Foulds.

September 10: Labor, \$192.40; material, \$39.50. Tenants were moving in and mechanics doing odd jobs in the apartments finishing up, so the decorators could get started.

277 September 17: Carpenters, \$192.40; material and supplies, \$34; mechanics erecting kitchen dressers and other incomplete work to prepare for the decorators.

September 24: Labor, \$192.40; supplies and material, \$43. Carpenters building and erecting kitchen dressers; hardware, bolts, screws, spring catches for the above.

278 October 1, 1927: Labor, \$192.40; material and supplies, \$47.50; mechanics working at odd jobs in the different apartments, filling and finishing floors, getting ready for decorating. A letter from Mr. Foulds requested weekly report. For two weeks reports are forwarded to Mr. Foulds. I suppose I forgot to mail them and the check might be on them. He said he remembers writing that letter. I have a copy of the letter.

Weekly report ending October 8: Carpenters, \$192.40; material and supplies, \$27. Finishing up apartment for decorators.

279 Week ending October 15: Carpenter, \$184.60; material, \$17; Arlington Shade Company, \$340.10 by check; labor and material finishing apartments for decorating; shades for windows. Work discontinued. That is all I have got.

*By Mr. Bowman.*

Q Did you keep any books in connection with the doing of this work? A No.

*Preston B. Seaman, direct.*

280

Q Are these papers from which you have been refreshing your recollection the records of the work which was done and the disbursements which were made by you that were kept week by week?

A Yes.

Q And these papers, then, were kept by you in lieu of books and records of any other nature?

A Yes.

281

Mr. Bowman: We now offer these in evidence.

Mr. Whitehead: Just a moment. Are those the only records he has?

The Witness: Yes, those are the only records I have.

Mr. Bowman: I offer them in evidence.

*By Mr. Whitehead.*

Q Are these carbon copies? A They are pen- 282  
cil copies.

Q They are pencil copies? A They are pencil  
copies.

*By Mr. Weinberger.*

Q Have you a record of the number of employees or laborers on the job? A No. They were coming and going.

Q Have you got any memorandum of the number of hours? A No, because they were working 283  
extra time, nights and Sundays.

Q This simply shows the total for the week?  
A This simply shows the total for the week.

Q And they don't show who the people were supposed to be or their addresses? A No. Most of these things were taken by numbers, the men going by numbers. Their names are not here. Whatever I had I gave to Mr. Foulds.

284 *Preston B. Seaman, direct.*

*By Mr. Platt.*

Q You didn't give Mr. Foulds any receipts for labor? A No. We never got receipts for labor.

Q You didn't give him receipts for material items? A All I have.

Q You haven't given receipts to Mr. Foulds for any other items. A All I have.

285 Q Are you able to say what you have? A No. I am not able to say that.

Q Did you keep any time sheets? A I kept no time sheets. Only these. I wasn't running a book-keeping establishment up there. I was finishing a building to get tenants in.

286 Mr. Weinberger: I object to them on the following grounds: First, that is not the best evidence; second, that there are no receipts showing the payments of these monies, except the verbal statement, and there are no checks to bear out this statement; and, further, it is a self-serving declaration.

287 Mr. Whitehead: I object to them. They were used, as I understand it, by the witness to refresh his memory. His testimony is in item by item. I object to the admission of these records as proof on the ground that they are in the best evidence; the originals are somewhere, and it does not sufficiently appear that they can't be produced.

Mr. Platt: I object to the admission of the evidence because it does not show any itemization of the labor, number of hours and days and number of men.

Mr. Berry: I want to add the further objection that the papers on their face are incomplete, that the witness has supplemented

*Preston B. Seaman, direct.*

288

the contents thereof by introducing conversations had with others, and also relies upon the fact of payment because of the assurance received from Mr. Baer.

Mr. Bowman: The answer to that is that they are merely offered as records kept the same as books would be kept by any man doing work, and has already been testified that although they are duplicate originals or originals, or anything you want to call them which had been sent to Mr. Foulds, that these or a duplicate made week by week, and I, therefore, claim their admission merely as such records complete or incomplete such as they are. They were made, as I say, from week to week. 289

Mr. Whitehead: It seems to me that they are merely memoranda probably used by the witness to refresh his recollection; but as proof they have no standing. 290

The Witness: They were made from day to day—

Mr. Bowman: Wait a minute.

The Special Master: They don't prove that he made the payments?

Mr. Bowman: No.

The Special Master: But it seems to me that they are admissible as records that he made at the time; no stronger than his testimony. 291

Mr. Weinberger: Well, over our objection.

The Special Master: I will admit them for what they are worth.

(The papers referred to were received in evidence and marked S&B 5.)

Mr. Bowman: I offer in evidence page 50 and page 51 ending with the first paragraph or

292 *Preston B. Seaman, direct.*

the Minutes of the Board of Directors of the Passaic Arms dated March 8th, 1927, showing the employment of Mr. Gibson, and also certain authority for the completion work, subject to verification with the original minutes.

Mr. Weinberger: I thought he was to get \$500 a week. I suppose you were getting at that.

293

Mr. Bowman: He was to get 5 per cent. The final report requires Gibson to account, and we have his account here. I want to show that he made payments as well as Mr. Seaman and Mr. Baer, the work being done under the supervision of Mr. Seaman but being paid for by the agent out of the rent.

(The pages referred to were received in evidence and marked S&B 6.)

294 *By Mr. Bowman.*

Q Now, then, pursuant to the employment of Mr. Gibson as agent as of the 8th day of March, did Mr. Gibson pay for labor materials and items of a similar nature, all of which work, however, was done under your supervision? A Yes.

295 Mr. Bowman: Now, I offer in evidence the order showing the appointment of the permanent receiver, a copy of which is stated to be a true and certified copy by Weinberger and Weinberger, attorneys for the receiver.

The Special Master: The 7th of October, 1927.

(The paper referred to was received in evidence and marked S&B 7).

*Preston B. Seaman, direct.*

296

*By Mr. Bowman.*

Q Is this the accounting that Mr. Gibson filed with the Court pursuant to the order of the Court of October 7th and to so account to the receiver?

Mr. Bowman: Will you admit this accounting by Mr. Gibson?

Mr. Weinberger: Yes.

Mr. Bowman: Subject to verification, I offer in evidence the accounting by Mr. Gibson under this order of October 7th. 297

(The paper referred to was received in evidence and marked S&B 8.)

Q Will you give us the total which you have testified was disbursed by yourself and Mr. Baer?

A The total disbursed for October 26th—from February 26 to October 15th, 1927, was \$12,748.45—12,748 and some-odd cents; forty-five cents, I guess—yes, forty-five cents. That is what we spent. 298

Q Now, I show you Exhibit S&B 8. Are the pencil notations on that notation in your handwriting? A Yes.

Q Now, can you state of your own knowledge that the work— A I don't think they are all in my handwriting. That doesn't seem to be mine (indicating). This is (indicating); this is (indicating); this is (indicating). I guess that is all. 299

Q Go through it and tell me if all of the pencil notations there are your handwriting? A Yes. Every pencil notation there is in my handwriting.

Q Can you state of your own knowledge whether or not the items of labor and the items of material set forth on that account were actually put into the building or were actually incorporated into the building? A Yes.

300 *Preston B. Seaman, direct.*

Q And that was done under your supervision?

A Yes.

Q And that was in addition to the work and labor which is set forth on your items? A Absolutely.

Q That is as far as the disbursements go? A That is as far as the disbursements go.

301 Q And you knew that Mr. Gibson was paying these items? A Yes.

Q As they came up and as of the dates that are set forth thereon? A Yes, sir.

Q Now, are these pencil notations which you have put here correct as to the kind of work that the men were doing? A Yes.

Q Are the further items the items as set forth in typewriting? A Yes.

302 Q Now, refer to the last page, namely, "Bills to be paid." Was the balance of \$250 ever paid by either yourself or Mr. Gibson or Mr. Baer to the Arlington Window Shade Company? A I think Mr. Baer paid that; I don't know.

Q Finally? A I think he finally paid it.

Q Well, then, that item is not contained in your— A No; never has been.

Q And that was paid since this preference was signed? A Yes. At least I think so. I didn't pay it.

303 Q Mr. Baer handled that? A Yes.

Q Now, the Van Dyk Furniture Company for the kitchen Hoosiers? A \$139.

Q Was that item ever paid so far as you know? A I don't think that has been paid.

Q You don't think that has been paid. Abendroth Brothers for ranges; so far as you know, has that balance been paid? A I think part of it has been paid.

*Preston B. Seaman, direct.*

304

Q You think part of it has been paid? A I think part of it has been paid, although I didn't pay it.

Mr. Bowman: I offer in evidence subject to verification with the original minutes, the Minutes of the Board of Directors dated 14th day of April, 1927, to be found on page 56.

Mr. Weinberger: Over objection on the ground that there was an injunction issued at that time. They had no right to do it. If they did it, it was ultra vires on the part of the corporation and in defiance of the Court of Chancery and any reliability incurred was incurred upon themselves. It wasn't pursuant to any order of the Court of Chancery, the Vice-Chancellor having said he never made an order. 305

Mr. Bowman: I move to strike that out. 306

Mr. Weinberger: I am stating my reasons for objecting.

Mr. Bowman: All right.

The Special Master: I don't think these minutes are the proper evidence.

Mr. Bowman: I ask for an exception. I ask that they be marked for identification.

The Special Master: Yes.

(The Minutes referred to were marked S&B 9 for identification.) 307

*By Mr. Bowman.*

Q Mr. Seaman, when was the first time that you ever met Mr. Murner, the receiver who was appointed by the Court in this matter? A The first time I had met him was the day after the padlock was put on. I think that was the 11th or 12th day of March.

308 *Preston B. Seaman, direct.*

Q In other words, that was after I had been appointed custodial receiver? A Yes.

Q Where did you meet him? A I telephoned him twice. I had a telephone communication in Paterson twice. I said, "You can come up in half hour. I will take you through the building." I showed him what we were doing.

309 Q You showed him the building in its unfinished condition? A I showed him the building in its unfinished condition on Saturday afternoon.

Q Now, go ahead. A Rather, that Saturday morning, eleven o'clock.

Q Tell us the conversation you had with him with respect to going on with the work. A I took him through the building and showed him the work I had there, and the people were working on the place.

310 Q Will you give us the conversation as much as you can recollect it? A I am giving you the conversation as much as I can recollect it.

Q You haven't said a word yet of any conversation? A I said I took him through the building.

Q What did you say to him and what did he say to you? A I told him we were finishing the building. He advised me to go and see Vice-Chancellor Lewis with an attorney.

311 Q Did he then tell you that since he had been appointed custodial receiver you should discontinue your work? A He certainly did not.

Q Did he say anything about stopping the work at all? A No, he did advise me to get a canvas and cover the notice of that leak on the front door so people couldn't see it. I took people through the other entrance.

Q When was the next time that you saw Mr. Murner after this conversation which, I think, you

*Preston B. Seaman, direct.*

placed as of March 12th? A Yes, March 11th or 12th. 312

Q When was the next time that you ever saw Mr. Murner? A I think sometime after the 7th of October.

Q In other words, you never saw him during the doing of all this work, in completing the building? A *Not at the building, no.*

Q All right. Did you see him anywhere else? A I may have seen him at the Court House in Paterson but not talking to him. Just seeing him; that is all; no conversation held. 313

Q Did he ever come to you or have anything to say to you respecting anything regarding the Passaic Arms and his being receiver? A Nothing at all, no.

Q Did he ever at any time tell you not to do any of this completion work A No.

Q. Because you were not authorized to do it? A He did not.

Q Did he ever tell you at any time that if you did this work at your own cost that that was your worry and that it would have to come out of your pocket? A He did not. 314

Q When did you see the attorneys for the receiver after this conversation you said you had on the Tuesday following March 10th, 1927? A Why, I think I saw him at a meeting of the Receiver of the General Industrial Engineering Company at their office.

Q Can you give us the approximate date of that? A I think it was April. 315

Q April, 1927? A I think it was April, 1927.

Q Did you have any conversation with them respecting the work that you were doing in completing the Passaic Arms? A Only in a general way.

Q All right. Tell us what you told him in a general way and whom you told. A I told them I was going on with the work and finishing it.

316 *Preston B. Seaman, direct.*

Q Do you recall whether it was Harry or Joseph Weinberger who was present at that time?

A Mr. Harry Weinberger.

Q Mr. Harry Weinberger? Did Mr. Weinberger as attorney for the receiver at that time tell you you should not do any work because you were under injunction in doing any work there? A He did not.

317 Q Did Mr. Weinberger tell you that if you did any work up there and disburse any monies, that they would have to come out of your own pockets or the funds of the Passaic Arms? A He did not.

Q In other words, then, as far as the receiver or his attorney was concerned, they never said a word to you respecting this completion work which you were doing and paying for out of your own pockets, or paying part of it out of your own pocket, as you have testified to? A He never said a word about the thing.

318 Q How often would you say you saw the attorneys for the receiver, either Mr. Harry Weinberger or Mr. Joseph Weinberger, during the time that you were doing this work, saying, between March 10 and October 7, 1927? A I would say three times.

319 Mr. Platt: I object to this particular line of testimony on the ground that these people were served with a copy of that order. A copy of the order was self-explanatory. There was no duty on anyone to advise them or warn them or anything else. I think it ought to be stricken out.

The Special Master: I sustain the objection. It is not admissible. This testimony regarding what the receiver's attorneys advised about the order will be stricken out.

*Preston B. Seaman, direct.*

320

Mr. Bowman: Exception.

The Special Master: Yes.

*By Mr. Bowman.*

Q Who was your attorney during all this period of time, Mr. Seaman? A Mr. Andrew Foulds.

Q Was he advising you as attorney during this period? A Yes. 321

Mr. Bowman: Now, I offer in evidence subject to verification the minutes of the Board of Directors of the Passaic Arms, as of the May 2nd, 1927, contained on pages 58 and 59.

Mr. Platt: Same objection.

The Special Master: It is not admissible.

Mr. Bowman: I ask that to be marked for identification.

(The pages referred to were marked S&B 322 10, for identification.)

Mr. Bowman: Similarly, I offer in evidence further minutes of the Board of Directors of the Passaic Arms, as of May 11th, 1927, on pages 63 and 64, subject to verification with the original minutes.

Mr. Weinberger: Objection on the ground that it was *ultra vires*, defying the order of the court wherein they were temporarily enjoined and any accounts that they performed at their own risk. 323

(The pages referred to were marked S&B 11 for identification.)

Mr. Bowman: In this particular instant I will follow it up with evidence that Weinberger & Weinberger made application to the court to pay some of these contracts that were entered into pursuant to this on the work

324 *Preston B. Seaman, direct.*

which was done before and after the permanent receiver was appointed.

The Special Master: There is no evidence yet to indicate what the Passaic Arms did after the appointment of the receiver.

325 Mr. Bowman: I now offer in evidence a contract entered into between the Passaic Arms and the Brisk Dampproofing Company, August 27, 1927.

Mr. Weinberger: Same objection and same reason.

Mr. Bowman: I ask that it be marked for identification.

(The contract referred to was marked S&B 12 for identification.)

*By Mr. Bowman.*

326 Q Now, then, Mr. Seaman, pursuant to your employment as shown by S&B 1 at \$500 a week, will you state how much time you spent in acting as contractor and architect and doing the work which you testified you did after commencing with the week, ending February 26, and up to October 9.

327 Mr. Weinberger: Just a minute. That is objected to on the ground first: That it embodies in a question a time beginning some time in February and going to and including some time in October. I meant as a matter of law, that if Mr. Seaman had a claim for alleged services that he rendered to the Passaic Arms, Inc., before the appointment of the custodial receiver, or the receiver, that it was his duty to file a proof of claim sworn to——

Mr. Bowman: I will withdraw the question and change the date from March 10 on.

Mr. Weinberger: That is objected to on the ground that the order specifically provided that they are restrained for acting in any manner, shape or form. What the Passaic Arms did, Seaman having been an officer of the company, was contempt of court and in violation of the order restraining the corporation from finishing, and it was an act *ultra vires*, and not binding on the creditors or the receiver or any person. I think anything that he claims for any sum of money is in evidential and should be stricken out and disallowed. 329

Mr. Weinberger: I object to that.

Mr. Platt: I object to that.

Mr. Weinberger: I don't care if he spent 24 hours a day. There was no legal authorization for his performing any service. It was an act *ultra vires* and in contempt and violation of the court order. The court restrained the officers and agents. Seaman was an officer of the company, and any claim for time he spent is immaterial. It should be stricken out. 330

Mr. Bowman: We have in evidence the statement of the court telling these men to go ahead and complete that work.

Mr. Weinberger: Which is denied.

Mr. Bowman: It is not denied as far as this record is concerned. The only evidence the Special Master has before him is our evidence at the present time. 331

Mr. Weinberger: And that is based on hearsay.

Mr. Bowman: It is not based on hearsay.

(Argument between counsel at this point on whether the order of reference to the Special Mas-

332 *Preston B. Seaman, direct.*

ter required the Special Master to make a complete finding of how much work was done and how much money was spent, and whether the order of reference just limited the Special Master to a finding of fact as to how much work was done and money spent.)

333 The Special Master: I will allow the question.

(The last question was read by the stenographer.)

The Witness: Why, I gave my undivided time from early morning to late at night, including Saturdays and Sundays, and holidays, and all.

*By Mr. Bowman.*

334 Q And are you seeking compensation here in accordance with the resolution of the Passaic Arms S & B Exhibit 1? A Yes, I am.

Q I ask you whether or not that is a reasonable compensation for an architect to do the character of work which you did?

Mr. Whitehead: Whether what is a reasonable compensation?

335 Mr. Bowman: \$500. A Yes, it is. It is less than \$75 a day, and I was working sixteen hours a day, Saturdays and Sundays and all.

Q Up to March 12th, then, you have included in your claim three weeks which are prior to the custodial receiver being appointed, have you not?

A Yes.

Q Now, taking these three weeks off, what, then, is the compensation which you claim less than three

*Preston B. Seaman, direct.*

336

weeks for the work you did after March 10th? A About \$16,000.

Q Make it exact, now. I want the exact figures.

A That's a total of sixteen—

Q What is the exact total? A \$87,000. ”

Q It would be \$15,500? A Yes.

Q What was the condition of this building at the time you discontinued your work? A It was —you mean finished? A Yes, it was practical- 337  
ly in finished condition so that it could be used. There were a few odds and ends to be done.

Q Well, can you take this report S&B 3 and tell us what items had not been completed as are shown thereon as of the time you discontinued your work?

A Yes, sir, the ceiling,—copperceiling of the porch was not installed. The ice boxes are all there yet, and were never set. They were substituted by other ones. They are still in the building, although 338  
they have been ordered to be taken away. The heating apparatus wasn't properly finished. As I say, Mrs. Leonard got pneumonia and we hooked it up temporarily. It was a dual system. The system was connected with the—

The Special Master: Well, specify the item.

Q Was the heating system completed when you were through? A No.

Q How much more work had to be done in con- 339  
nection with that? A The pipes had to be covered. I couldn't say. The pipes had to be asbestos covered; certain connections to be made; certain valves to be put in.

Q Was it in working operation? A It was in working operation, yes.

Q Go ahead. Are there any other items? A Well, the roofs still leaks and the halls did leak.

340 *Preston B. Seaman, cross.*

Q Well, that was because the damproofing was not completed? A The damproofing had nothing to do with the roof.

Q Oh. I withdraw that. A I would say the rest was done.

Mr. Bowman: Cross Examination.

341 *Cross examination by Mr. Weinberger.*

Q Mr. Seaman, did you have a bank account?

A In the Passaic Arms, no.

Q You personally had a bank account? A Yes.

Q Where? A Up in Middletown, New York.

Q Why didn't you pay the check? A Because people I paid didn't want checks. Baer was the man who issued checks.

342 Q The reason why you didn't pay was people didn't want checks? A People wanted cash.

Q They wanted cash? A Absolutely, cash.

Q Well, now Mr. Seaman, I take it that you knew there was a custodial receiver appointed? A Yes, I knew there was a custodial receiver appointed.

Q You knew there was an injunction restraining you from acting? Your corporation from functioning? A I understand Vice-Chancellor Lewis notified that it told me to go ahead.

343 Q He told you to have corporation meetings, too, did he? A Yes; to finish the building.

Q No. He told you to have corporation meetings, too? A He told me to finish the building. What went with finishing the building I had to have.

Q When did he tell you this? A It was on the 11th or 12th of March.

Q Did you tell him how much it would cost to finish the building? A I didn't know at the time.

*Preston B. Seaman, cross.*

344

Q Did you get any estimate? A He didn't ask me.

Q The only agreement you had, as I take it, was as appears in the minutes of this book you have produced here today? A I don't know what you mean.

Q You testified that this minute book you produced covers everything that happened in the Pas-  
saic Arms? A I think it does. 345

Q Oh, You only think so? A I think so.

Q Well, were you to get \$500 a week for your services? A Yes.

Q They included everything? A Yes.

Q That was the only agreement made with reference to your services? A Yes.

Q You are sure of that? A That was to complete the building. Nothing to do with drawing of the plans of the building.

Q Well, were you to get paid for drawing the  
plans of the building? 346

Mr. Bowman: I object to that.

A Do you think I draw plans for nothing?

Q Were you to get paid for that?

Mr. Bowman: I object to that. We are only dealing now with his employment and doing the work in completing the building as an architect and contractor. 347

The Special Master: Unless he is going to show that that is going to include all the services.

Mr. Bowman: Here is a specific resolution that shows it is not. Here is what it says:— It is on page 48, S&B Exhibit 1: "A resolution was passed and duly seconded and unanimously carried authorizing Mr. Seaman

348 *Preston B. Seaman, cross.*

to use his judgment in the purchase of materials and labor to complete the buildings ready for occupancy, and the necessary funds for same to be temporarily advanced by Mrs. Seaman and Baer until sufficient money from the rents of the building became available to reimburse them.

349 "Further resolved that the compensation of Mr. Seaman for such additional services to be at a weekly salary of \$500 per week to be paid as previously stated, now, as money or funds became available from rent or other income from the building."

That was dated February 21st.

*By Mr. Weinberger.*

Q What salary were you getting before?

350 Mr. Bowman: I object to that.

Q Mr. Seaman; what other agreements did you have, if any?

Mr. Bowman: I object to it as immaterial; Mr. Weinberger, what is the object of this testimony.

351 Mr. Weinberger: The object is this: I am trying to show that this gentleman lived in that place in an apartment there and never paid a nickel rent, and I want to show that there was an agreement that for his services he wasn't to pay rent. That's what we swore in an affidavit.

Mr. Bowman: These with reference to a previous employment. It has nothing to do with this.

The Special Master: I should say the question is proper.

*Preston B. Seaman, cross.*

352

*By Mr. Weinberger.*

Q Were there any other agreements that you had? A Yes.

Q What other agreements? A I was employed as architect.

Q You were employed as architect? A Yes.

Q When? A 1925.

Q At what salary? A Commission.

353

Q What commission? A I don't just remember what it was. The thing speaks for itself.

*By Mr. Bowman.*

Q Was there a written contract? A No; there was a resolution.

*By Mr. Weinberger.*

Q You were to get how much? A I was getting my disbursements.

354

Q \$25,000? A It amounted to more than \$25,000.

Q For doing what? A Oh, for doing a lot of things. Any work that an architect is called on—do you realize—

Q To complete that building? A It was in relation to getting permits and a writ of certiorari.

Q You were to get \$25,000 for getting a permit? A —my other work in connection with it.

Q What other work? A Drawing plans, specifications.

355

Q And supervising the building? A Yes, and also going to Trenton to get the certiorari to complete the building.

Q Was it for being an architect and with your influence for getting a writ of certiorari? A I said nothing about influence; I haven't any influence.

356 *Preston B. Seaman, cross.*

Q Well, let us see: You were to get \$25,000; is that right? A In that neighborhood, yes.

Q What neighborhood was that? A I say it was in the neighborhood of \$25,000.

Q It might have been fifty? A It might have been thirty.

Q It might have been thirty? A Yes, it might have been thirty.

357 Q Did you get your money? A I certainly did not.

Q You were to get thirty, or in the neighborhood of \$30,000? A I was to get my disbursements—

Q What disbursements? A I went to Trenton.

Q How much does it cost to go to Trenton? A I don't know. I haven't got the books here.

358 I wouldn't tell you if I did know.

Mr. Bowman: I object to that. You are my client. Answer the question.

Q You were to get \$30,000 for disbursements in getting a permit in the City of Passaic for the erection of an apartment house known as the Passaic Arms, is that right? A Yes.

359 Q You were to get that, and that was to include the cost of drawing plans and specifications and your charges for supervising the entire erection of the building? A Yes.

Q When was the contract made? A I think it was made in 1925.

Q Is it in the minutes? A It is in the minutes.

Mr. Bowman: Yes. Here it is in the minutes.

*Preston B. Seaman, cross.*

360

Q Well, now, will you tell us why it was——

Mr. Bowman: Page nineteen of the minutes.

Q Will you tell us why it was that in addition to this \$30,000 that you were to get for the completion of this building and going down to Trenton to get this certiorari that you slipped in a resolution you were to get \$500 a week additional? 361

A That was after the contract. I had gone to work on the completing and finishing it.

Q Well, you were to get \$30,000——

Mr. Bowman: I object to that.

Q. That was an architect.

Mr. Bowman: Why certainly. It is entirely different.

362

Q That wasn't to supervise the building.

Mr. Bowman: Architects don't supervise.

Mr. Weinberger: They don't?

Mr. Bowman: No, they don't.

Q Mr. Seaman, you were to get \$500 a week in addition to the \$30,000, is that right? A Yes.

Q Well, I call your attention to the meetings of the 5th of December, 1925, that you produced a copy of, in which it is embodied in this alleged 363 resolution that in addition to the above you are to furnish for the use of various mechanics, all required plans, blue prints and specifications——

Mr. Bowman: I have no objection to that being offered in evidence.

Q (continuing)—that may be required during the course of the work to go with your services as

364 *Preston B. Seaman, cross.*

architect in supervising the said work as may be required while the building is in the course of construction. That included everything? A No, it didn't include going to Trenton and getting a certiorari.

Q How much did you charge for the trip to Trenton? \$20,000? A No.

365 Q You made three trips. \$10,000 apiece, was it?

Mr. Bowman: I object to this as immaterial. He never got a thing. He never charged anything.

Q Did you file a claim for the \$30,000? A No.

Q Why not, if you were entitled to it? A (No answer).

*By Mr. Bowman.*

366 Q Why not? A I don't know as there was any reason. I was advised not to do it.

*By Mr. Weinberger.*

Q Who advised you not to? A Mr. Foulds. I think Mr. Foulds; I am not sure.

Q That was your lawyer? A Yes.

Q He told you not to file a claim for \$30,000?

367 A He told me not to file—he advised me not to file it.

Q You didn't? A No.

Q Mr. Seaman, when Mr. Murner became receiver in 1927, you were served with an order.

A I think so.

Q You were restrained for acting? A Yes.

Q And you knew that as an officer of the company? A Yes.

Q Did you ever make an affidavit in the course

*Preston B. Seaman, cross.*

368

of finishing the building? A No; I couldn't tell anybody about the water system until it was tried and failed.

Q You started to make payments, is that right?

A Yes.

Q And hire people? A Yes.

Q You claim on the alleged oral assertion of Vice-Chancellor Lewis? A Yes.

Q Why didn't you keep books? A The reason 369  
I didn't keep books: I was trying to finish the building; I wasn't a bookkeeper. I wasn't there for that purpose. I was there to finish the building and get tenants in the building; and get money coming in.

Q You paid everybody in cash, except one check? A Yes.

Q Where did you get the money from? A  
From the bank.

Q What bank? A A New York Bank. 370

Q What bank? A I don't know.

Mr. Bowman: I object to it as immaterial.

Mr. Weinberger: I think it is relevant.

The Witness: I will get the check if necessary.

Mr. Weinberger: Just a minute.

Mr. Bowman: I object to this as immaterial.

371

*By Mr. Weinberger.*

Q What bank? A I don't know, but I will get the check.

Q You mean you testify under oath here that you don't know the name of the bank? A I don't know the name of the bank.

Q How many banks do you deal with? A I don't know whether it was my check or Mrs. Seaman's check.

372 *Preston B. Seaman, cross.*

Q You were up before Vice-Chancellor Lewis when a special meeting was called, and you agreed at that time to produce these checks today. A I said I only had one check.

Mr. Bowman: We got the checks here.

Mr. Weinberger: Well, now, wait a minute.

373 Q You know what I am talking about? About the checks in which you drew money out to pay these people in cash. A I didn't say anything about furnishing these checks, no.

Q Where are these checks? A Those are my personal checks.

Q Where are they? A Home.

*By Mr. Platt.*

374 Q You remember the question was asked where the money came from and you said you or Mrs. Seaman drew checks. A Yes.

Q And you obtained cash on these checks and you were asked whether you would produce those checks at this meeting; and you said you would. A I don't remember. These checks are all packed up, and it is impossible to get them within a week or so.

Q You said you would get them within a week or so? A I only know of one check——

375 Q I am talking about the checks you said were drawn from Mrs. Seaman's account for which you got the cash to pay laborers. A Well, I can get those checks.

*By Mr. Weinberger.*

Q What bank did you deal with? A The Chatham & Phenix and a Middletown bank.

*Preston B. Seaman, cross.*

376

Q Did you claim Mrs. Seaman gave the money, now? A No.

Mr. Bowman: I object to that.

Q Will you produce the checks that you withdrew? A I think I can, yes.

Q You only think so? A I think I can, yes.

Q Did you deal with any other bank? A I think not. 377

Q How much was each check you ever drew? A \$200; maybe \$300. I don't remember. I will get the checks?

Q Certainly, we want the checks. A I don't know whether they are my checks or Mr. Seaman's.

Q Where did you cash the checks? A Some here in Passaic.

Q Where? A With Mr. Carey on Bloomfield Avenue. The endorsement will show where we cashed them. I can't tell you any more than that. 378

Q You are sure the only accounts you had was with the Chatham & Phoenix Bank? A Yes.

Q And what other bank? A The Middletown Bank.

Q What is the name? A The Merchants.

Q You cashed checks there? A I didn't cash checks there. I made the checks here. They were members of the Federal Reserve and it went through the clearing house. 379

Q Now, Mr. Seaman, you, of course, didn't have any cash outside of that. You always got that money in the bank? A Yes, I always got that money in the bank.

Q So you would have vouchers to show? A Yes, I can show you the vouchers.

Q Where did you get the money to deposit in the bank?

380 *Preston B. Seaman, cross.*

Mr. Bowman: I object to that.

A I didn't get it through—

Mr. Bowman: I object to it as incompetent, irrelevant and immaterial.

Mr. Weinberger: I think it is perfectly proper to place the source of the funds that this man claims he paid.

381

The Special Master: What you want to prove is that he paid it?

Mr. Weinberger: I want to show where he got it.

The Special Master: What difference does it make?

Mr. Weinberger: All right. I won't press it.

382 *By Mr. Weinberger.*

Q Now, Mr. Seaman, you cannot produce here one receipt of any person who did any labor work for you, is that correct? A I don't think so, no.

Q Did you collect any money from the rent?

A Not a cent.

Q You are sure about that? A Absolutely.

Q Did you have any personal judgment against you?

Mr. Bowman: I object to that.

383

Q Did you use the money collected from the Passaic Arms and direct Mr. Gibson to pay—

Mr. Bowman: I object to it as incompetent, irrelevant and immaterial.

The Special Master: I don't see what that has to do with it.

Mr. Weinberger: I am going to show the man didn't have money and he directed Gib-

*Preston B. Seaman, cross.*

384

son to pay judgments against himself personally with money he collected from rents of that building.

The Special Master: That wouldn't prove he didn't have any money.

Mr. Weinberger: I withdraw it. I won't press it.

*By Mr. Weinberger.*

385

Q Mr. Seaman, you had an account known as the Passaic Arms, Inc., didn't you? A I never had any account.

Q The corporation? A The corporation may have. I didn't have it.

Q You drew checks? A I never drew any checks.

Q Well, who did? A If they were drawn, Mr. Baer drew them.

Q Who were the officers of that company? A 386  
I was one; Baer was another, and Mrs. Baer was another.

Q How much money did you start with in this corporation?

Mr. Bowman: I object to this as immaterial.

Mr. Weinberger: I think it is perfectly material.

Mr. Bowman: This is a personal claim of 387  
this man for money that he spent.

The Special Master: I can't see that it is relevant.

Mr. Weinberger: All right.

*By Mr. Weinberger.*

Q Mr. Seaman, you testified that the people wouldn't have checks; they wanted cash? A Yes.

Q Now, is that true? A That is true, yes.

388 *Preston B. Seaman, cross.*

Q Well, take a look at this and tell us what that is. A That is Mr. Baer's writing. I don't know anything about it. Mr. Baer will tell you all about these checks.

Q Take a look at it and read it. A It is the Richardson-Boynton, yes.

Q For what? Signed by whom? A Signed by Philip Baer, Treasurer, Passaic Arms.

389 Q Well, that wasn't Mr. Baer's check, was it? Mr. Seaman, I take it that you made an accurate statement under oath of the money paid by Mr. Baer and yourself, is that true? A I don't know of any——

Q Were the items you put in that statement——

Mr. Weinberger: Will you read the question, please?

390 (The last question was read by the stenographer.)

The Witness: The statement is accurate.

Q Well, did Mr. Baer pay this money out or did the Passaic Arms pay this money out?

Mr. Bowman: Mr. Baer admits that that was an error now.

The Witness: I didn't draw the check, Mr. Corbin; I don't know anything at all about it.

391

*By the Special Master.*

Q You testified it was Mr. Baer's check paid that \$142? A Yes.

Q In view of this check, what would you have to say (indicating)? A Mr. Baer wrongly advised me.

*Preston B. Seaman, cross.*

392

*By Mr. Weinberger.*

Q Your answer is "Mr. Baer wrongly advised me"? A Yes.

Q I show you another check.

Mr. Weinberger: I would like to have that check marked for identification.

Mr. Bowman: No objection.

The Special Master: Put it in evidence. 393

(The check referred to was received in evidence and marked R-1.)

Q I show you another check dated April 15, 1927, to the Arlington Shade Company, a hundred dollars and ask you——

The Special Master: Concerning which you testified.

Q (Continuing) Concerning which you testified Mr. Baer paid out personally. A I simply say if Baer paid that check, it is an error on his part. I don't know anything at all about it. It is in Baer's writing. I know nothing about it. 394

(Another check referred to was received in evidence and marked R-2.)

Q You have that in your item. A I have that in my item, because I got these memorandums from Mr. Baer. 395

Q You are wrong about that? A Yes, Mr. Baer is wrong and I am wrong.

Q Well, the check is made out by the Passaic Arms?

Mr. Bowman: Is that item on that list?

The Witness: In the first place, the Arlington Shade Company——

The Special Master: Look at the list.

396 *Preston B. Seaman, cross.*

Witness: That was given to me by Baer. He paid it, and I marked it so. Mr. Baer informed me that I had given his check. I suppose it was his personal check. It now appears that it is the check of the Passaic Arms.

*By Mr. Weinberger.*

397 Q I say, that is a mistake. A That is a mistake, but not my mistake.

Q What do you mean it is a mistake but not your mistake A It is a mistake, but not my mistake.

Q Didn't you submit this statement under oath to the Court of Chancery? A Yes. I was given that information and I so marked it by Mr. Baer.

Q I show you another check dated June 14, 1927, to Albert Cassano,

398 (The check referred to was received in evidence and marked R-3.)

Q (Continuing) made by Passaic Arms for \$63.46, and ask whether that statement that you submitted to the Court of Chancery under oath does not include that money was paid out individually by you or Mr. Baer or by both of you? A \$63.

Q Is that wrong? That is misinformation, too, isn't it? A Yes, as far as I know, it is wrong.

399 Q It is wrong? A Yes.

Q I show you another check dated May 31, 1927—

(The check referred to was received in evidence and marked R-4.)

Q (Continuing)—to the Public Service Electric and Gas Company, Passaic Arms, Inc., Phillip Baer. A Public Service?

*Preston B. Seaman, cross.*

400

Q I ask you if that is in your statement? A  
The check——

*By The Special Master.*

Q What have you to say about that? A I  
don't know what to say.

Mr. Bowman: Yes, you know what to say.  
You are misinformed.

401

The Witness: Yes.

*By Mr. Weinberger.*

Q It is untrue. A Yes.

Q How many more are there, Mr. Seaman?

A I don't know.

Q They might all be the same? A They might  
all be the same.

Q Where are all your vouchers of the Passaic  
Arms, Inc.? A I don't know. I never had any.

402

Q You were what officer there? A I was  
president. I wasn't treasurer.

Q You weren't interested? A I wasn't inter-  
ested.

Q You didn't inquire, either? A No.

Q You haven't got them? A No, I haven't got  
them.

Q Where is the bank statement of the Passaic  
Arms? A I guess Baer has it.

403

Q Don't you know? A No, I don't know.

Mr. Weinberger: Well, at this point, I am  
going to let Mr. Whitehead start in.

(A recess was taken until 2 p. m.)

404 *Preston B. Seaman, cross.*

AFTERNOON SESSION

*By Mr. Weinberger.*

Q Mr. Seaman, you testified that the only knowledge you had of alleged disbursements of which you now claim reimbursement was based on information given to you by Mr. Baer with the exception of one check which you gave out yourself, and that check was for \$71.90. Is that true? A Yes.

405

Mr. Bowman: I object to that question, as it does not cover the evidence.

Q With the exception of the alleged claim of \$500 a week?

Mr. Bowman: I still object to the question as not covering the testimony.

Mr. Weinberger: That is what he swore to.

406

Mr. Bowman: I say it is not.

Mr. Weinberger: I answered yes.

The Special Master: The witness can say if that is so.

Mr. Platt: At this time I want to make a motion. We are taking a lot of testimony now and we are about to get into a lot of involved testimony which can lead to only two or three results. Your report will state that he spent so much money, that they spent it, or they didn't spend so much money, or that they are entitled to so much: That will lead to a question of law before the Chancellor, eventually. I wonder if it would not be proper to put a motion now to you to rule on the question of law.

407

My question of law is this, that you determine whether or not Mrs. Seaman and Baer have any right as against the funds in the

*Preston B. Seaman, cross.*

408

hands of the receiver on any alleged claims for labor and services or expenditures from March 10, 1927, on. The purpose of that motion is this: If you were to determine now as a matter of fact that they have no valid claim against the funds in the hands of the receiver, our work is done, and we don't have to take any more testimony.

Whereas, if we do take this testimony, we are going to resolve our questions finally into that question. Why take any testimony now? Why not go to the Vice-Chancellor with the question or have you decide that question; that is what I am trying to do by this motion? 409

The Special Master: Was that question before the Vice-Chancellor when the reference was made?

(Argument between Counsel and the Special Master on the point involved.) 410

Mr. Platt: The direct testimony that we have already heard as to the expenditures made by Mr. Baer and Mr. Seaman shows that they were made pursuant to the resolutions of the Passaic Arms and those resolutions show that they were admitted to affect most of them either immediately before the appointment of the receiver or sometime after the appointment of a Receiver. 411

Now, knowing that fact from the testimony here, I say now is the time for this motion and for you to rule on whether or not they have any claim at all that is valid, based on the information given to us this morning.

The Special Master: I will hold the ruling on the motion for a few minutes.

412 *Preston B. Seaman, cross.*

*By Mr. Weinberger.*

Q Is it true or untrue that the statements and allegations which you swore to under oath in asking this court of Chancery for a preference, were based solely on information handed to you by Mr. Baer with the exception of one check for \$71.90, or whatever the correct amount was which you  
413 claim you paid exclusively of your alleged claim for services as an architect?

Mr. Bowman: I object to that question.

The Special Master: He says it is true.

Mr. Bowman: There is no such testimony. There is no filling the record with anything that is not so.

Mr. Weinberger: I withdraw the question.

Q Mr. Seaman, was any of this money which  
414 you claim to have expended ever paid you back by Mr. John Paul Gibson? A No, sir.

Q You are positive of that? A I am quite positive.

Q What? A I am quite positive of that fact, yes, Mr. Gibson never gave me anything.

Q The same thing with reference to Mr. Baer?

Mr. Bowman: I object to his answering for Baer.

415 Q If you know? A I don't know.

Q Didn't Gibson pay the item which you have testified under oath for the National Electric Company? A No, sir, he did not.

Q And that is the only check you can produce? A That is the only check I can produce, yes.

Q You now swear again that he didn't pay you this money back? A He didn't pay me this money back, no, sir.

*Preston B. Seaman, cross.*

416

Q I show you a check made out and dated August 2nd, 1927 to Feder & Ringler, attorneys, by John Paul Gibson, \$125, with this notation on the back of the check, "In payment of the full settlement on claim by Nefsky against Preston B. Seaman and Passaic Arms, Inc.," and ask you whether or not you didn't authorize Mr. Gibson to pay that money? A I will answer that—

Q Yes or no?

417

Mr. Bowman: It can't be answered yes or no.

The Special Master: He says did you authorize it.

Q Did you authorize it or didn't you? A I think I did but that needs explanation.

Mr. Bowman: All right. The answer is you did.

418

Q Was there a judgment against you personally? A I don't know of any, no.

Q You think you authorized it? A I think I did.

Q For what purpose? A Mr. Foulds said to settle the claim if possible.

Mr. Bowman: Tell us about the claim first.

The Witness: It was far painting, but I am not sure. I think the claim was for painting. 419

Mr. Bowman: Done where? A Up at the Passaic Arms.

Q By whom? A By Nefsky.

Q Under whose instructions? A Mine.

Q Well, for God's sake, tell us. How much was the claim for painting up there? A He claimed \$250.

420 *Preston B. Seaman, cross.*

Q Your attorney Foulds suggested you settle for \$125? A Yes. Mr. Gibson settled for \$125.

Q And Mr. Gibson was ordered to make a check out to cover that claim and that is the check (indicating)? A Yes.

*By Mr. Weinberger.*

421 Q You ordered him to make the payment? A No,——right, I didn't.

*By Mr. Bowman.*

Q Did Mr. Foulds tell him to make it? A Yes.

*By Mr. Weinberger.*

Q Well, you had the money, didn't you?

422 Mr. Bowman: I object to that as immaterial whether he did or not.

Q Well, you had the money, didn't you?

Mr. Bowman: I object to the question.

Q Why didn't you pay it?

The Special Master: Well, he paid it.

423 Mr. Weinberger: I appreciate that, but he claims he had the money and was paying the claims——All right. I withdraw it.

Q Did you put that in as part of your claim?

A No, sir.

Mr. Bowman: May I put one question?

The Special Master: Yes.

*By Mr. Bowman.*

Q Do you know as a matter of fact that that is not Mr. Gibson's accounting? A (No answer.)

*Preston B. Seaman, cross.*

424

Mr. Bowman: Well, it is in evidence.

*The Special Master.*

Q Do you know? Do you know whether it is in Gibson's account? A It is in Mr. Gibson's account, yes.

*Cross examination by Mr. Whitehead.*

Q Mr. Seaman, you have been president of the Passaic Arms ever since its organization, haven't you? A Yes, sir. 425

Q And the stockholders of the Passaic Arms were divided into three parts: You had \$2,000 worth, Philip Baer had \$2,000 worth, and Mrs. Philip Baer had \$2,000 worth. A Yes.

Q And there were no other stockholders? A There were no other stockholders.

Q There have never been any other stockholders? A No. 426

Q When you went to Paterson with Mr. Foulds to see Vice-Chancellor Lewis on March 12 or 13, 1927, you went to protest against the appointment of the receiver for the Passaic Arms, didn't you? A I don't know, Mr. Whitehead, whether it was a protest; it might have been; we wanted to know what it was about.

Q Isn't it true that you were very indignant because of the appointment of a receiver? A I was indignant about them putting a lock on the door. 427

Q You were also indignant about the appointment of the receiver, weren't you? A I might have been.

Q Isn't it true that you felt at that time that it was no proper occasion for a receiver? A I didn't think there was.

428 *Preston B. Seaman, cross.*

Q You didn't think there was? A No.

Q When you heard on the 10th of March that a receiver had been appointed you and Mr. Foulds sought the first opportunity you could get to see the Vice-Chancellor, didn't you? A Yes.

Q Isn't it true when you saw the Vice-Chancellor you urged upon him the fact that in your judgment there was no proper reason for a receiver for the Passaic Arms? A I don't think I urged it upon him.

Q Didn't you hear all the conversation? A No. I said I don't know what Foulds said until I was finally called up.

Q When you were called up did the Vice-Chancellor have any conversation with you? A Yes. He said, "Who is this man?"

Q Didn't you at that time undertake to tell the Vice-Chancellor that you were an officer of the Passaic Arms? A I think not.

Q Weren't you introduced to the Vice-Chancellor as an officer of the Passaic Arms? A The architect or the mover of the scheme.

Q Were you introduced to him as the president of the Passaic Arms? A I was not; not to my recollection.

Q Didn't you say to the Vice-Chancellor that you thought that the Passaic Arms was not insolvent? A I don't think so.

Q Don't you know whether Foulds said that to the Vice-Chancellor? A I think Foulds said that.

Q The primary purpose of your visit was to impress that upon the Vice-Chancellor, wasn't it? A I think that was it; that might be it.

Q Isn't it true you also said to the Vice-Chancellor at that time that it was going to do an

*Preston B. Seaman, cross.*

432

injury to the Passaic Arms, if the completion of the building wasn't gone ahead with? A Yes.

Q You made that representation? A I think I said the appointment of the receiver would spoil the sale of the apartments.

Q Didn't you say also that it was important for the building to be finished? A I don't know.

Q Did you feel that at that time? A I may have felt that at that time, but I don't think I said it. 433

Q You felt as an officer of the Passaic Arms that the building should be finished? A Yes.

Q Now, at that time, then, you went up to see the Vice-Chancellor, there were mechanics' liens actually had been filed upon the property, weren't there? A I think there was one; I don't remember. I think there was only one at that time.

Q At least one? A I think there was one, yes. Filed in January. 434

Q At any rate, you knew that the General Industrial was in financial difficulty? A Yes.

Q And you anticipated, no doubt, that there would be liens filed? A Yes.

Q When you spoke to the Vice-Chancellor about completing the building, there was nothing said about Seaman and Baer being paid for it, was there? A No, sir; nothing particular.

Q. Mr. Baer was not present, was he? A No. Mr. Baer was not present. 435

Q There wasn't anything said about Seaman being paid \$500 a week as architect, was there? A No.

Q There was nothing said about Seaman being paid anything for services, was there? A No.

Q In fact, the real purpose of your visit was to impress on the Vice-Chancellor that this cor-

436 *Preston B. Seaman, cross.*

poration was not insolvent, and there should not be a receiver for it and that the building should be completed as soon as possible so it could be rented, isn't that true? A Yes.

Q Now, after you saw the Vice-Chancellor, they hired you as architect on that building, did they? A No.

Q When did you move into the building? A  
437 In May, 1927.

Q You have lived there continuously since, have you not? A Yes.

Q You have occupied an apartment of how many rooms? A Four rooms.

Q And bath? A And bath.

Q Having a rentable value compared with other similar apartments in the building of how much a month? A I don't know, Mr. Whitehead. You can term it that way. When I took that apart-  
438 ment I wasn't to take that apartment——

Q Don't go off into that.

*By Mr. Bowman.*

Q What was the rental value? A I finished the apartment——

*By Mr. Whitehead.*

Q I am not concerned with that. What is the  
439 rentable value of your apartment? A The rentable value of my apartment as I took it wasn't worth more than \$50 a month.

Q Was there any other apartment in that building consisting of four rooms and bath renting for \$50 a month? A No.

Q What is the rent of other apartments with four rooms and bath? A A hundred.

*Preston B. Seaman, cross.*

440

Q A hundred? You have lived there ever since? A Yes, sir.

Q And you are still living there? A I am still living there.

Q Have you ever paid any rent for that apartment since May, 1927? A No.

Q Now, with respect to these exhibits: This copy of your statement sent to Mr. Foulds marked Exhibit S&B 5: Tell us how that was prepared? 441

A That was prepared from day to day and at the end of the week it was made up and sent to Mr. Foulds.

Q Do you mean to say that the entries were made on those sheets from day to day? A Not particularly on those sheets; they were made on other memoranda.

Q They were made on other memoranda? A There was some days there was nothing except the men working. 442

Q Where are these other memoranda? A I don't think I have them now.

Q You mean to tell us that these sheets were copied, from other memoranda? A Yes.

Q How often? A Every week.

Q Do I understand you to say that every week you made a statement and then made a pencil copy of the statement that is here now? A No. I made a typewritten copy of the statement which was sent to Mr. Foulds. 443

Q You made a typewritten original? A Yes.

Q And a pencil copy? A That was mine, yes.

Q Were they both made out at the same time, or practically so? A Practically.

Q Within an hour or two? A Within the day.

Q Within the day? A Yes.

Q Did you make a carbon copy of your typewritten statement? A No.

444 *Preston B. Seaman, cross.*

Q So, as we understand it now, these sheets were prepared from week to week? A These sheets were prepared from week to week.

Q Practically simultaneously with the typewritten original, is that true? A Yes.

Q Are those sheets all in your handwriting? A Every one of them.

445 Q Now, do these sheets show disbursements made by check? A I put where it was check, yes.

Q So, as you read it off here into the testimony here this morning— A Yes.

Q (Continuing) —they include disbursements made by check? A And cash also.

Q As I understand it, you have already said in your cross-examination that as to these four checks produced, your statement is erroneous; is that right? A Yes.

446 Q Are you able to say whether your statement is correct as to any other check except the one you say you made yourself? A I think the statement is correct; to all intents and purposes it is correct.

Q. Are you able to state positively that that statement is correct with respect to the other checks which you say were made by Mr. Baer? A Well, it may have been Mr. Baer paid part of this money and it may have been part in check; I don't know.

447 Q You have already admitted an error with respect to four checks, which you say were disbursements of Mr. Baer's, and it turned out to be disbursements of the Passaic Arms. Now, as to the balance of the checks that you say were made by Mr. Baer, are you able to tell now of your own knowledge whether those are checks of Mr. Baer's personally or also are checks of the Passaic Arms? A They are Mr. Baer's personally.

*Preston B. Seaman, cross.*

448

Q You know that of your own knowledge? A Yes, sir.

Q So that only as to the four that have been produced here this morning are you in error? A That is the only one, because I was misinformed.

Q Are you sure you are not misinformed as to the others?

Mr. Bowman: We will put them in evidence. 449

Mr. Whitehead: Covering all the rest?

Mr. Bowman: Covering all the rest, yes.

Q When did you get the information with respect to these checks? A You speak of these four?

Q No; on the checks you have entered in your statement? A Well, I don't know as I have the information at all. Mr. Baer can go—will have to give that. 450

Q How did you get it into your statement? A I put it in as cash.

Q You put it in as cash? A Yes, I put it in as cash here.

Q On what information? A Because I paid the men.

Q On what information, Mr. Seaman, did you put it in as cash? A Bills which were cashed.

Q How did you know the disbursement was made? A I made the disbursement. 451

Q You made the disbursement? A I paid the bill, yes.

Q I am referring now to payments made by check. A Well, I don't know anything about that—Mr. Baer's checks.

Q You say you made up that statement and you say you know that it is right. How did you know when you put down in that statement the

452 *Preston B. Seaman, cross.*

disbursements made by Baer's check? How did you know whether that was right or not? A Because Bater told me so.

Q Had you anything in writing from Baer?  
A No.

Q When did he tell you? A At the time.

Q At the time? A Yes.

453 Q So, when he told you as to these four checks that he had made these disbursements, that turns out to be misinformation, doesn't it? A Misinformation.

Q Now, with respect to these statements: Have you any receipt or voucher? A The only receipt I have, as I say, I gave to Mr. Foulds.

Q Have you any recollection now as to how many of these items were covered by receipts or vouchers? A No, sir.

454 Q Do you know? A It was material.

Q Do you know whether any labor items set forth in there were covered by receipt or voucher? A No, it wasn't.

Q Every single one of these was made without any receipt taken; is that right? A That is right.

Q Do you recall the names of any of these men that you had working for you? A That is right.

Q Well, state what names you know. A Mr. Ryder.

455 Q R-y-d-e-r? A R-y-d-e-r. Mr. Strong and Mr. Kleinhamer.

Q Any others? A I don't remember any other.

Q Were they carpenters or masons? A They were carpenters.

Q Were there any masons that you remember the names of? A Not that I remember the names of.

*Preston B. Seaman, cross.*

456

Q How often did you pay these men? A Every week.

Q Every week? A Every Saturday, or when they finished.

Q You paid them in cash? A Yes, I paid them in cash.

Q Did they give you any memorandum of their hours and their rate per hour? A No.

Q Did you make any memorandum of the 457 hours and rate per hour? A No.

Q For all the labor items in your statement there is no supporting voucher? A No voucher.

Q And no supporting check, is that true? A Yes. There may have been in the cash—for instance, \$300 in cash; there may have been \$150 check from Mr. Baer. I don't remember that.

Q But you have no check? A No.

Q That supports your labor item? A I 458 haven't any. Mr. Baer may.

Q As far as you know you don't know of any checks? A Maybe Baer may have them.

Q What was the greatest number of men you had at work at any one time? A Seven or eight.

Q Seven or eight? All carpenters? A No; masons, bricklayers, laborers.

Q And they were working an eight-hour day? A They were working more than an eight-hour day; they were working extra time.

Q How much did you pay for extra time? A 459 Double time.

Q Double time? Have you any recollection as to what you were paying them per hour? A I don't know.

Q Does that apply to both carpenters and masons? A The carpenters varied. I think one man got \$1.25; I don't remember just exactly. I don't remember the exact wages.

460 *Preston B. Seaman, cross.*

Q Did you make at the time anywhere any records of that? A I think not.

Q You carried it in your head? A I might have made a memorandum for Mr. Baer. I would say to him, "We need so much money for the payroll this week."

Q But you carried the details in your head? A I think perhaps I had a memorandum of that.

461 Q Who employed these men? A I did.

Q Were they the men who had been working on the job for the General Industrial? A Only the three. That is the reason I know their names.

Q Mr. Seaman, as to the other items aside from the labor item: You are unable to state to us what are supported by receipts and what are not? A Yes.

Q You are unable to produce any receipts? A Yes.

462 Q Except the check that Mr. Baer may produce, you have no other checks? A No, I have no other checks except that one.

Q Now, your statement shows a total amount, or your claim is for a total amount of \$12,748.45? A Yes.

Q How much of that did you put in? A Well, that I couldn't tell you now, Mr. Whitehead. Mr. Baer and I would have to get together on that.

463 Q Haven't you got together? A No, we haven't got together because there was no occasion for it.

Q You knew the hearing was coming on? A Right.

Mr. Bowman: I object to that as immaterial.

Mr. Whitehead: I submit that it is perfectly proper.

*Preston B. Seaman, cross.*

464

Mr. Bowman: Well, here is a joint claim filed.

The Special Master: I think it is immaterial.

Mr. Bowman: I withdraw the objection.

Q How much did you put in? A I couldn't say.

Q And you have no classification of that? A I have no classification of that today. 465

Q You have no record of it anywhere? A No, I have no record of it anywhere.

Q You have nothing to show how much cash you contributed to this joint obligation? A No.

Q Do you recall that you put in anything? A Oh, yes.

Q But you are unable to say how much? A Yes.

Q Are you able to approximate it within a thousand dollars? A I think so. 466

Q How much would you say? A I would say five or six thousand.

Q Five or six thousand you put in? A I would say that off hand.

Q Did you put it in out of your own funds? Is that true? A Yes.

Q As I understand it, that was drawn by your check from your personal bank account or from Mrs. Seaman's bank account? A Yes. 467

Q Have you any recollection or knowledge as to how much was drawn from Mrs. Seaman's bank account?

Mr. Bowman: I object to that as immaterial. The source of his money is certainly not material here.

The Special Master: It is not the source, but it is whether he put it in.

468 *Preston B. Seaman, cross.*

Mr. Bowman: What is the question?

(The last question was read by the stenographer).

The Witness: By going over the checks and finding out.

Q Haven't you done that? A I haven't done that because they were packing up and I was unable to get it.

469

Q What? A I haven't done that because they were packing up and I was unable to get it.

Q Have you made any effort at all? A Yes, I have.

Q What effort did you make or have you made? A I looked for some checks and I haven't found them.

Q Haven't found any? A No.

470 Q So, you are wholly unprepared to state here how much of this money was Mrs. Seaman's?

Mr. Bowman: I object to that. The mere fact that a man gets money from his wife doesn't mean that it is her money—

Q How much is derived from Mrs. Seaman's money? A I am unable to state without the checks.

471 Q Now, then, when you paid these laborers you paid them in cash, didn't you? A As far as I know, yes. There may have been a few checks of Mr. Baer's.

Q Checks made direct to the laborers? A Yes.

Q And with them there were some others. A Yes.

Q But the bulk of it was paid by cash? A Yes.

*Preston B. Seaman, cross.*

472

Q By you? A Yes.

Q And that cash was got where? A The checks were cashed in New York and some over here.

Q By "checks" you refer to Mr. Baer's checks and your checks? A I cashed none of Mr. Baer's checks.

Q But your own checks? A Yes, and Mrs. 473  
Seaman's.

Q Are the returned checks among your vouchers? A Yes. They are packed up.

Q Where are they packed up? A Packed up in shipping cases ready to ship to New York.

Q In your apartment home? A Yes.

Q In wooden packing cases? A No, they are not in wooden packing cases; pasteboard.

Q Pasteboard? A Pasteboard packing cases, 474  
yes.

Q They could be easily gotten out? A Yes, if I knew just what package they were in.

Q You haven't made any effort—— A Yes, I have made an effort; I looked through some and didn't find them.

Q Why didn't you look through all of them? A There is about twenty of them. I have other work.

Q How long is your petition filed in this case? 475  
About two years, isn't it? A Yes.

Q And you have made no effort except such as you described to produce this vital evidence in support of this claim? A I can get those checks.

Q You can? A Yes.

Q Now, Mr. Seaman, you have here in the statement that you put in evidence this morning, between yourself and Mr. Baer a total of \$12,748.45, and that you say is correct? A Well, you made a correction there.

476 *Preston B. Seaman, cross.*

Q Except for these four checks? A Yes.

Q That is correct? A Yes.

Q In your statement you show disbursements made between February 26th and April 16th of \$3,693.91. A Between what dates was that?

Q Beginning—— The beginning of your statement, the week ending February 26th? A Yes.

477 Q And the week ending April 16th. Between these two dates you show a total of \$3,693.91? A Well, I haven't totalled it here; so I can't tell.

Q Well, your first sheet shows a total of \$3,149, which you carried over into your summary, and those dates from there to there (indicating) show a total of—— A Let me see the copy, please?

(Mr. Whitehead handed the copy referred to the witness).

478 *By Mr. Weinberger.*

Q Just the total, Mr. Seaman. A Well, I didn't make that copy. That is what I was looking at. I was looking to see if it was my work. I don't think it is my work.

*By Mr. Whitehead.*

Q Is there any doubt about that amount? A I think it is correct.

479 Q You say these items are all correct as set forth here and were all made by you or Mr. Baer in connection with the completion of the building except for the insurance item of \$300; is that right? A I think so, yes.

Q You think so? A I think so.

Q Is there any doubt about it? A Well, I would have to go over these things to sum up the total. Mine is not totalled.

Q This is not totalled. Assuming, subject to

*Preston B. Seaman, cross.*

480

verification, that my statement is correct that these items show a total of \$3,639.91, less the item of \$300, that shows the amount you expended towards the completion of this building prior to April 16th, does it not? A Yes.

Q Now, I suppose you remember having testified in this case on examination before Mr. Weinberger back in April, 1927, do you not? A I remember. 481

Q On the Receiver's examination? A Passaic Arms or General Industrial?

Q General Industrial. A Yes.

Q You were called as a witness to testify? A Yes.

Q I would like to submit certain of the testimony and ask you whether or not that was correct:

"Q Set an average. A About eight men a day.

"Question: Have you been paying them? Answer: Yes. 482

"Question: Yourself? Answer: Not all myself.

"Question: Who had been paying them? Answer: Mr. Baer has paid some.

"Question: How much have you paid since you have—Answer: I can not tell you that.

"Question: Why can't you? Answer: Because I haven't got it. 483

"Question: Aren't you interested in knowing how much is being paid out? Answer: I can make an account of it.

"Question: That is not now; we want it now. Answer: I haven't got the bills in yet.

"Question: About how much? Answer: Three or four hundred probably.

"Question: For all the work that has been done since the Court has permitted you to go on that building? Answer: Yes.

484 *Preston B. Seaman, cross.*

“Question: Upon request of the Court you have expended three or four hundred dollars? Answer: In cash, yes.

“Question: Did you pay anything else? Notes or anything else? Answer: No, we haven’t any notes.

485 “Question: Did you incur any obligations of any kind or character other than the three or four hundred dollars? Answer: When the work is done we will get the bills and pay for them. There are some people there grading.

“Question: Up to the present, so that there can not be any mental reservation, are there bills other than the three or four hundred dollars? Answer: When the grading is done we will get a bill for it and when the painting is done we will get a bill for it.”

486 Do you remember that testimony? A I remember something of that sort, yes. I never paid any bills for painting at all. Mr. Gibson paid those.

Q Was that testimony true? A It was as true as I could tell at that time.

Q And do you recall on what date the hearing was held? A No.

487 Q If I state to you that the transcript shows it was held on Tuesday, the 18th day of April, 1927, would you be in doubt about that? A I wouldn’t be in any doubt about it.

Q So, your testimony on Tuesday, April 18th, 1927, was to the effect that some three or four hundred dollars had been expended by you to that time? A I think there were some bills—

Q Still unrendered; is that a correct statement of the substance of your testimony? A I think it is correct. Correct as I could tell at that time. At that time I didn’t know the heating apparatus

*Preston B. Seaman, cross.*

488

had to be all broken and taken out and a new hot water system put in.

Q Is there anything else in explanation of that testimony? Is there anything further in the way of explanation of that testimony? A That is as far as I knew at that time?

Q Is there anything else you want to add in explanation of this testimony A No.

489

Q So, this morning you testified to actual cash expenditures? A Yes.

Q On or about the week ending April 16th, two days prior to this testimony of over three thousand dollars? A Well, I didn't have my memorandums with me when I testified there, and I didn't know, and I said I didn't know. I said at that time I didn't know. They said about; so I said about.

Q Listen to this:

"Up to the present, so that there can not be any mental reservation, are there bills other than the three or four hundred dollars? Answer: When the grading is done we will get a bill for it and when the painting is done we will get a bill for it."

490

The Witness: Mr. Gibson got a bill for the painting.

Q Very true, but is there anything here that leaves you in doubt that you were claiming at that time expenditures for the completion of the building of three or four hundred dollars? Expenditures then made? A Well, Mr. Whitehead, anybody knows three or four hundred dollars wouldn't complete that building.

491

Q I am not asking you that question. A I haven't any excuse to make for that at all. A I don't remember. It is absurd.

Q This was absurd? A Yes.

492 *Preston B. Seaman, cross.*

Q This testimony you gave on April 18th is absurd? A As far as the figures go, yes.

Q Listen. At the time you gave this testimony on April 18th, 1927, did you have these statements?

A They possibly were home, yes.

Q You had them? Yes, some of them.

Q They were made down to the time? A Yes.

493 Q They were in your possession? A They were.

Q Where were the originals? A They had been sent off from week to week.

Q To whom? A Foulds.

Q Was Foulds present with you at this examination? A Yes.

Q Did he have any comment to make to you after this examination as to the inaccuracy of it?

494 A No.

Q And these copies were in your possession at the time? A Yes, these copies were in my possession at the time.

Q You didn't allude to that here? A I didn't have them.

Q You didn't have them. A No.

Q You didn't tell the receiver you had statements home that would disclose—A I probably wasn't asked.

495 Q Oh, you were only telling what you were asked? A Yes, that is all.

*By the Special Master.*

Q When did you find out that that amount stated in that statement was not correct and that the amount you testified today was correct? A Well, I haven't any recollection of that testimony at all, Mr. Corbin. These were the things that we kept right straight along.

*Preston B. Seaman, cross.*

496

Q After you testified did you check up to find out whether—A No, sir, I don't think so. I was very busy on other stuff.

*By Mr. Bowman.*

Q Were you ever shown a copy of these minutes? Were you ever given an opportunity to correct these minutes or see whether the stenographer 497 correctly transcribed the minutes? A No.

Q May you have said three or four hundred dollars and the stenographer made a mistake?—

Mr. Whitehead: I object to that and ask that it be stricken out.

The Special Master: Yes, I will strike it out.

*By Mr. Whitehead.*

498

Q Have you any doubt of the accuracy of the transcription of these notes? A You mean as to my saying so?

Q About the fact that they correctly set forth what you said? A I don't think the figures correctly set forth what I meant. I don't say I didn't say it. I didn't mean that. Three or four hundred dollars is out of the question.

Q Your explanation is that although the sum of 499 three or four hundred dollars is repeated three or four times throughout the questions and answers, you still don't think you understand what was being set forth? A Well, the figures certainly did not correspond to the figures—amount of money it would cost to complete the building.

Q You say it was absurd? A Yes.

Q You are sure that what you are saying now can not be characterized a few months hence as absurd?

500 *Preston B. Seaman, cross.*

Mr. Bowman: I object to that.

The Special Master: Yes.

Q Now, Mr. Seaman, you stated in your testimony this morning that when the contractor left the job the building was 65 per cent finished? A Yes.

501 Q Is that a correct statement? A That is a correct statement according to the report I made.

Q That is a correct statement? A Yes.—

Q Do you recall in your testimony, to which we have already referred, you said at the time the contractors left the building it was 85 per cent completed? A I don't remember that, no.

Q I refer to page 71 of that testimony, question by the Receiver:

502 "Question: How near completed was the building when they went insolvent? Answer: I would say it was probably 85 per cent done."

If that statement was made at that time, was there anything wrong with it? A I don't think it was 85 per cent. 65.

Q And you think you were probably wrong here? A Yes, if I stated it that way, yes, I was wrong.

503 Q Do you remember that at the time of this examination you gave to the Receiver an estimate of what it would cost to complete the building? A I don't remember that, no.

Q You don't remember that you did? A No.

Q If the building was 65 per cent. completed at the time the contractor went insolvent, what would it cost to complete it? A Well, I can't say.

Q You can't say? A No, I can't say as to what it would cost.

Q You wouldn't have it in the estimate? A No, I wouldn't make an estimate.

*Preston B. Seaman, cross.*

504

Q You are not prepared now to say? A No.

Q Page 62 of your testimony:

“Question: How much would it cost to complete the building? What I mean is incompleting work there now? Answer: Finish it up according to the plans and specifications? I say it would cost probably between twelve and fifteen thousand dollars.”

505

The Witness: I probably said that.

Q You probably said that? A Yes.

Q You probably think that is correct? A I don't think it is, because I had to tear out the heating apparatus and put new buck floors in, and the doors didn't properly close—no hardware on them; that is, like striking plates, and other incidentals—I don't know just what they were now; practically all taken care of in here (indicating).

506

Q At the time you gave your estimate to the Receiver in response to his question, did you include anything for architect's fees? A No.

Q Did you state at any time, do you recall, to the Receiver, that you would expect to be paid an architect's fees? A No.

Q Is this a correct statement now, Mr. Seaman, in connection with the expenditure of twelve thousand dollars as shown in your statement? A Yes.

507

Q The sum additional of six or seven thousand dollars expended by the custodial receiver according to his statement—

Mr. Bowman: I object to that. There is no evidence of any—

Mr. Whitehead: The statement of the Receiver here.

Mr. Bowman: Not by the custodial.

Mr. Whitehead: All right.

508 *Preston B. Seaman, cross.*

Q Do you know about how much Mr. Gibson expended under your direction? A No, I don't know.

Mr. Bowman: He wasn't the Custodial Receiver.

The Special Master: He wasn't the Custodial Receiver.

509 Mr. Whitehead: All right.

Q You spent about \$12,000. Do you know about how much Gibson spent? A I think somewhere around \$6,000.

Q Making a total of about \$19,000? A And the further sum of five or six thousand dollars.

Q That has not been paid? A It has been paid. We are getting it as rent.

510 Q How much did it amount to in dollars and cents? A A little over five thousand dollars.

Q Making a total expenditure of around \$25,000? A Yes.

Q You feel justified in submitting a statement here for \$17,000 for architect's fees? A Yes.

Q You feel justified in submitting a statement of \$17,000 for architects's fees in superintending the expenditure of less than \$25,000 on this property; is that right; A Yes, I do.

511 Q Now, Mr. Seaman, did you file a claim with the Receiver for this account of yours and Baer's? A No.

Q Did you file a mechanic's lien upon the property? A No.

Q Did you ever take any steps to protect this alleged claim other than by the filing of this petition? A Yes.

Q What? A There was a lien all drawn up ready to file, but never was filed.

*Preston B. Seaman, cross.*

512

Q Never was filed. Do you know why it wasn't filed? A I was advised not to.

Q By whom? A By several people.

Q Several people? A Yes.

Q Did they give you any reason for that advice? A Why, they did at that time. I think I have forgotten the exact reasons now.

Q But you took promiscuous advice? A I wouldn't say it was promiscuous advice. 513

Q Were they lawyers? A No, not all of them.

Q On their recommendation you didn't file your lien? A Yes.

Q But you don't recall now on what that was based? A What?

Q You don't recall now what reason was given for such advice? A Well, they seemed to think that the property was coming back to the Passaic Arms and it wouldn't look well to do it. 514

Q In other words, what you were doing was done right along in the place: You thought you were simply completing your own property that was to be ultimately yours free from claim? A I think that is the idea.

Q And you never presented anything in the nature of a claim for this money until you filed this petition in November, 1928? A No.

Q Let me ask you this, Mr. Seaman: Were laborers on the job being paid by both you and Mr. Gibson at the same time? A Not at the same time, no. 515

Q Are you very positive about that? A Yes.

Q For instance, for the week ending July 30th you paid \$192.40 labor. That was all the labor paid for that week? A That was labor. What Gibson paid I don't know. He made arrangements

516 *Preston B. Seaman, cross.*

Q I asked you a moment ago whether the labor on the building was being paid by both you and Gibson at the same time? A Not for the same working hours.

Q Not for the same working hours, but laborers were being paid by you during the week and other laborers were being paid by Gibson during the week; is that so? A Yes.

517 Q Was the same laborer paid partly by you and partly by Gibson in a week? A In some instances the same people worked for Gibson during the day and worked for me at night and Sundays.

Q Worked for you at night and Sundays? A And Saturday afternoons.

Q Can you mention any? A I can't mention any.

Q You have no record? A No.

518 Q Do you know whether Mr. Ryder or Mr. Kleinhamer or Mr. Strong were in the employ of Mr. Gibson? A I don't think Mr. Strong was ever in the employ of Mr. Gibson; I think Mr. Kleinhamer and Mr. Ryder were, but not Mr. Strong.

Q Of course, you checked the work they did? A Yes.

Q As you stated this morning? A I kept a check on my work.

519 Q Didn't you check his? A No.

Q You would accept what he did there was under your supervision? A No. He told me the time they were working.

Q You have no way of telling whether the bills that Gibson was paying out were right or not? A I had every reason to believe it was right. The men were working for him during the day; they were working for me during the nights and Sundays and Saturday afternoons.

*Preston B. Seaman, cross.*

520

Q Didn't you have anything to go by in arriving at that conclusion? A I had nothing at all.

Q You had nothing at all? A Except what they were doing.

Q What did you do? Take a statement that Gibson submitted? A I don't think I ever had much to do with Gibson's statement. He ran his part and I ran mine.

Q You testified this morning that all he did was under your direction and supervision. A Yes. If he wanted carpenters to fix a buckled floor, carpenters were sent in to do it. 521

Q Who sent them? A I sent them.

Q But you have no records of how many hours they worked? A No.

Q Or precisely what they did? A No, because at that time they were working for him.

Q At that time they were working for him. Is that your signature on that paper (indicating)? A Yes. 522

Q What are the typewritten words immediately before it? A "Examined and found correct."

Mr. Whitehead: I am showing him a receipt for time by certain laborers on the job.

Q Well, did you examine it and find it correct?

A I examined it, yes.

Q You don't know whether you did it or not? 523

A It is about three years ago, and how could I tell?

Q But you are here seeking \$17,000 for superintending this job? A Yes.

Q And you say now you don't know whether you did or not? A I was in the cellar this minute and on the roof the next minutes and I was out in the garage the next minute. I can't re-

524 *Preston B. Seaman, cross.*

member all I did. In a general way I had all I could do and worked from morning till night.

Q But on the important matter of checking the money that was going out on this work you are very vague. A Well, the writing speaks for itself.

Q Yes, but your testimony also speaks for itself. A It is three years ago. You can't expect me to remember that.

525

Mr. Bowman: I ask that it be marked for identification now.

Mr. Whitehead: Put it in evidence if you want to.

Mr. Bowman: All right.

(The paper referred to was received in evidence and marked S & B 13.)

526 Q Here is another one. Is that your signature on that one? A Yes.

Q What does that say?

Mr. Bowman: I object. The paper speaks for itself.

Q What are the words above it?

Mr. Bowman: I object to it. The paper speaks for itself.

527 A "Examined and found correct."

(The paper referred to was received in evidence and marked CM1.)

Q Mr. Seaman, as I understand it, you took no action by way of either presenting or attempting to enforce this claim that we are now talking about until you filed your petition for a claim as a preference in November, 1928, is that true. A Yes.

*Preston B. Seaman, cross.*

528

Mr. Whitehead: I think that is all I want to ask the gentleman.

Mr. Platt: I want to press that motion again, if your Honor please, with this additional ground: From the testimony now brought out on direct and cross examination we find that these gentlemen elected or had an election and made an election. Their election was not to either file a claim or file a mechanic's lien; their election was to take a 529 chance on getting the property back.

Having taken that election they should abide by it under the circumstances, and as a matter of law, they have no valid lien or preference today. If they have anything at all they have a general claim which would come in after a mechanic's lienor's claim, and we know as a matter of fact there is not sufficient money to pay lienors; so, as general creditors they wouldn't get anything. 530

I say that any additional testimony that we might take now would be wasted time.

Mr. Bowman: I object to that on the ground that the order specifically provides for taking testimony, and not for passing on the law.

Mr. Platt: Suppose we ask your Honor to find as a fact that there is no claim.

(Argument between Counsel and the Special Master.)

531

The Special Master: I deny the motion for the present, but you may renew it when the claimants' testimony is finished.

Mr. Bowman: In view of the cross-examination questions respecting the employment of Mr. Seaman as architect by the Passaic Arms, I offer in evidence subject to verification the resolution employing Mr. Seaman as an architect, to be found

532 *Preston B. Seaman, redirect.*

at pages 19 and 20, being minutes of the 5th of December, 1925.

(The pages referred to were received in evidence and marked S&B 14.)

*Redirect examination* by Mr. Bowman.

Q As I recall the questions which Mr. White-  
533 head read respecting your testimony given on  
April 18th, 1927, which testimony purports to state  
that there was only three or four hundred dollars  
expended up to that time in the completion of the  
building, did you note that the word "bills" was  
used in these questions quite frequently?

Mr. Berry: I object to that.

Mr. Whitehead: I object to the form of  
the question.

534 The Special Master: Sustained.

Mr. Bowman: I withdraw it. Let me have  
the testimony. I will put it this way:

*By Mr. Bowman.*

Due to the fact that the word "bills" was used  
in the testimony which was read to you, is it pos-  
sible that in giving your testimony that there were  
three or four hundred dollars that you had in  
mind unpaid bills at that time?

535 Mr. Berry: I object to that as leading.

Mr. Whitehead: I object to that as leading.

The Special Master: Yes.

Mr. Bowman: All right.

Q I now ask you if this was part of your testi-  
mony previous to the testimony read by Mr. White-  
head:

"Question: In all how many men had been  
working there on an average a day? Answer:

*Preston B. Scaman, redirect.*

536

Probably on an average daily one time I had some masons there.

“Question: Set an average? A About eight men a day.

“Question: Have you been paying them? Answer: Yes.

“Question: Yourself? Answer: Not all myself.

“Question: Who has been paying them? Answer: 537  
Mr. Baer has been paying them.

“Question: How much have you paid since you have—Answer: I cannot tell you that.

“Question: Why can't you? A Because I haven't got it.”

Mr. Whitehead: I read all that.

Mr. Bowman: All right.

Q In order to make sure that I understand your 538  
testimony: The moneys which you say were disbursed in accordance with Exhibit S&B 5 came either from Mr. Baer or from checks of yourself or your wife which you cashed; is that right?

Mr. Berry: I object to the question as improper. It has already been gone over on direct examination.

The Special Master: Yes. There is no doubt about it.

Mr. Bowman: All right.

539

Q And so far as this represents actual work done and money disbursed, you now say that these documents are correct no matter in what shape disbursements were made, whether by check or cash? A Yes.

Mr. Bowman: That is all.

540 *Preston B. Seaman, recross.*

*Recross examination by Mr. Whitehead.*

Q Mr. Seaman, who were the directors of the Passaic Arms? A Mr. Baer and Mrs. Baer and myself.

Q You have put certain minutes into the record subject to verification. Will the record show who were present at these meetings? A I think  
541 some of them will.

Q You won't say all? A Wouldn't say all.

Q Then, the records won't disclose whether there was a quorum present or not? A Yes, I think it will do that. Three.

Q For instance, let us take the meeting of—

Mr. Bowman: February 21st?

Mr. Whitehead: Yes.

Mr. Bowman: All three directors stated to be present.

542

Q That was held, it says, at the office of the company. A Yes.

Q Where was that? A At my house.

Q At the meeting held on the 8th of March, 1927, the minutes of which are in the record, as S&B 6, there is no recital as to who was present. Have you any recollection as to who was present? A There was always a quorum.

Q A quorum would consist commonly of your-  
543 self and Mr. Baer? A Yes.

Q And that was true in the majority of the instances? A I wouldn't say that was true in the majority of the instances.

Q Are you able to say whether at this particular meeting anybody but yourself and Baer was present? A I couldn't say that.

Q You couldn't say that? A No, sir.

Q And the record doesn't show? A No.

*Preston B. Seaman, recross.*

544

Q Now, Mr. Seaman, did the Passaic Arms at any time give to Mr. Gibson written authority to act for them in connection with this building? A Yes, I think they did. I think Mr. Gibson presented the written authority and Mr. Baer signed it and possibly I signed it. I don't remember.

Q Have you any copy of it? A I haven't any copy of it. Possibly Mr. Baer has. He was the custodian of those things; I wasn't.

545

Q Is that your signature and Mr. Baer's (indicating)? A Yes.

Mr. Whitehead: (Typewritten the 8th of March, 1927. I would like to have it marked for identification.

The Witness: I think Mr. Gibson wrote that.

(The paper referred to was marked CM 2 for identification.)

546

Mr. Bowman: I want to call your Honor's attention to the fact that the occupancy of Mr. Seaman's apartment is pursuant to a resolution in evidence S&B 6, and I want to read it.

The Special Master: It is in the record.

Mr. Bowman: Yes. It is just a reminder. And I also state upon the record that Weinberger & Weinberger as attorneys for the Receiver made a motion to collect the rent from Mr. Seaman and to punish him for contempt of Court for not obeying, which motion is still pending and undecided.

547

*Recross examination by Mr. Whitehead.*

Q Mr. Seaman, I find later in this testimony when you were examined on April 28, 1927, before the Receiver, that there were these questions and answers:

548 *Preston B. Seaman, recross.*

“At the last examination the question was asked of you with regard to the amount of money that was expended for the completion or towards the completion of the building since the appointment of the Custodial Receiver. Have you had occasion to refresh your recollection as to the exact amount expended? Answer: I went over my items. I wasn't taking into consideration what they had paid on account: Kitchen cabinets and shades.”

549

“Question: Have you a list of them showing what has actually been expended: Answer: Yes.

“Question: That is a statement of the expenditures made? Answer: This is a statement (producing same).”

Mr. Whitehead: Then the statement is here in detail. At the expense of a little time, if the Court is willing, I think this should go into the record.

550

Q (Continuing):

“Week ending February 26th: Bronze saddles for the outside doors, \$56.80, expressage from Newark \$1.50, installing same \$48.

“Week ending March 5th: Labor on storage rooms in basement \$61.60 —”

Mr. Bowman: I object to this. If it is there it ought to be put in evidence rather than reading from each—rather than reading every item.

551

The Special Master: Is it a page?

Mr. Whitehead: Two-thirds of a page.

The Special Master: Could that page be taken out?

Mr. Bowman: Mark it in evidence.

Mr. Whitehead: All right. Mark to the end of the statement showing week ending

*Preston B. Seaman, redirect.*

552

April 16th in order that it may compare with the figures that we have heretofore used in cross-examination.

The Special Master: How much does it total?

Mr. Whitehead: This shows a total of \$1,875.80, and includes an item paid by the Passaic Arms check as heretofore disclosed in the testimony of \$146.50 to Richardson-Boyn-ton. 553

Q Have you anything you wish to say in explanation of that testimony? A No. I don't know anything about it.

Q You don't know anything about it. There is nothing you wish to say in explanation of this statement? A No.

Q Have you anything in explanation of this statement? A No. 554

Mr. Whitehead: I would like to mark in evidence page 94 down to the end of the item set forth for the week ending April 16th.

(Page 94 referred to was received in evidence and marked CM 3.)

*Redirect examination by Mr. Bowman.*

Q Take your Exhibit 5. I show you CM Exhibit 3. Can you state why there should exist differences between these two exhibits? A Well, I can explain that first one probably. The man made a mistake in the first one and I called his attention to it. 555

Q What man? A The man who furnished the bronze saddles. I got the check with me.

Q Well——

556 *Philip Baer, direct.*

Mr. Bowman: Well, maybe this witness should go off the stand and check this up, and I will call another witness in the meantime.

(Witness temporarily excused.)

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557 PHILIP BAER, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

*Direct examination* by Mr. Bowman.

Q Mr. Baer, you are the Treasurer of the Passaic Arms, Inc.? A Yes, sir.

Q Now, will you produce the checks which Mr. Seaman testified cover the items which were paid by you by check? A (Witness produced the checks referred to.)

558 Mr. Bowman: The witness produces twelve personal checks dated between February 18th, 1927, and July 21st, 1927. I offer them in evidence,

Mr. Weinberger: Whom are the checks payable to?

Mr. Bowman: Payable to parties mentioned in Exhibit 5.

The Special Master: I think we had better enumerate them.

559 Mr. Bowman: All right. I offer in evidence check dated February 18th, 1927, to the order of Cromwell, Reid & Company, \$300.

March 9th, a check to the order of Henry L. Butler, \$41.34.

March 9th, Braverman Marble Works, \$25.

March 12th, Van Dyk Furniture, \$200.

March 14th, H. R. Mills & Company, \$56.27.

May 13th, John Parkins, \$50.

*Preston B. Seaman, redirect.*

560

May 16th, Fidelity Union Trust Company of New Jersey, \$1,161.88.

May 17th, Van Dyke Furniture Company, \$213.

May 19th, D. Schumer, \$65.

May 21st, Cash, \$9, and on the side in pencil, "P. T. G. Company."

July 1st, Arlington Window Shade Company, \$50. 561

July 21st, B. Goodman, \$112.50.

The Special Master: This will be marked again S&B.

(The checks were thereupon received in evidence and marked S&B 15.)

---

PRESTON B. SEAMAN, resumed the stand, and further testified as follows:

562

The witness: My explanation of this—

*Redirect examination* by Mr. Bowman (Continued).

Q Wait a minute. Will you state to his Honor what you have in explanation to make for the differences between the items that are shown on CM Exhibit 3 and Exhibit S&B 5? A This shows the preparation—

The Special Master: Which is this?

563

Mr. Bowman: Exhibit 3.

A (Continuing) Exhibit 3 shows the preparation. For instance, we put a marble piece in the vestibule. We had to prepare a foundation for the marble piece to go up against it in the side and along the bottom, and the same way with the saddles. The saddles had to have a piece of marble under them. The tile wasn't finished up. We

564 *Preston B. Seaman, redirect.*

also had to drill a plug to fasten the bronze saddles and the tile. So we drilled a hole and put the wooden plugs in and screwed it to the wooden plugs. That is the difference between the two items. This item—that would come in the labor here, and the bronze saddles and material would be by itself, and this is the preparation for it, which is included in the labor basis.

565

*By Mr. Platt.*

Q How do you explain, for instance, on week ending March 8th you show 66 for labor and Exhibit 5 shows 291? A That is particularly with the storeroom. It was other labor going at this storeroom.

Q Your testimony is, then, that you are correct from your figures? A That is what it says.

566 Q Is that your only explanation at the present time? A Yes, unless something is brought to my attention that I would remember.

*By Mr. Whitehead.*

Q That is the best explanation you can offer now? A Yes.

Q And you make that explanation in spite of the fact that previous questions and answers of your testimony is:

567 "Have you had occasion to refresh your recollection with regard to the exact amount expended? Answer: I went over my items. I wasn't taking into consideration what they had paid on account of kitchen cabinets and shades.

"Question: Have you a list of that showing what has actually been expended? Answer: Yes.

"Question: That is the statement of the expenditures made? Answer: This is the statement."

*Philip Baer, direct.*

568

A My answer to that is these saddles were gotten and they were delivered on the job and the marble for the vestibule, and when we come to put it in we found we had to prepare it to put it in.

Q At the last examination the question was asked of you with regard to the amount of money that was expended for the completion of towards the completion of the building since the appointment of the Custodial Receiver:

569

“Question: Have you had occasion to refresh your recollection with regard to the exact amount expended,” and in reply to this question as now in the record you produced this statement, didn’t you? A (No answer.)

Q Didn’t you? A Yes, I produced that statement; it covers exactly what I say there—the preparation of it.

*By Mr. Bowman.*

570

Q In other words, then, your explanation now is that it does not purport to be a complete statement, and for that reason—

Mr. Whitehead: I object to that. The testimony shows this is a complete statement made upon a check by this witness.

---

PHILIP BAER, resumed the stand, and testified further as follows: 571

*Direct examination by Mr. Bowman (Continued).*

Q Now, Mr. Baer, did you further any other checks to Mr. Seaman to pay items which he has testified were paid with respect to completing this building? A I did.

Q Produce these checks. A (The witness produced the checks.)

572 *Philip Baer, direct.*

Q I show you three checks, all dated March 19th.

Mr. Weinberger: What year?

Mr. Bowman: 1927.

Q Do you know what kind of work the payees of that check were doing?

573 Mr. Weinberger: That is objected to because obviously it is based on hearsay.

Q Were you on the job during the work? A I was.

Q Do you know that those men, the payees, were working on the job at that time? A I do.

Q Were you personally acquainted with them? A I was.

574 Q And did you make these checks payable to them for labor done on that job prior to March 19th? A I did.

Q And are those the items set forth in Mr. Seaman's account and which he testified he thought he paid in cash but actually were paid by you by these checks? A Correct.

Mr. Bowman: I offer the checks in evidence.

Mr. Berry: Do I understand the question to embody a time prior to March, 1927?

575 Mr. Bowman: No. March 19th, 1927 is for the work that week.

Mr. Berry: For that week?

Mr. Bowman: Yes.

Mr. Berry: I want to press an objection to the offer in evidence of that check for the reasons stated before, that any payment made after the appointment of the permanent custodial receiver are not chargeable against the estate of this corporation.

*Philip Baer, direct.*

576

The Special Master: Well, of course, that objection will be taken up at the end, but the purpose now seems to be——

Mr. Berry: With that reservation that it is not binding on us because it is in violation of the injunction and the Court order and was without any authority, there is no objection to the checks——the amount of which is how much?

577

The Special Master: Well, I think we should put that in.

Mr. Bowman: I will read them in the record:

Personal check of Philip Baer, dated March 19th, 1927, payable to the order of W. J. Ryder, \$39.20, endorsed by Mr. Ryder.

Personal check of Philip Baer dated March 19th, 1927, payable to the order of Mr. Strong, \$33.60.

578

March 19th, check of Julia Baer, Philip Baer, attorney, John Kleinhamer for \$23.80, endorsed both by Kleinhamer and Mr. Ryder.

(The checks referred to were received in evidence and marked S&B 16.)

*By Mr. Bowman.*

Q Can you state why those checks were drawn at that time, Mr. Baer? A (No answer.)

579

(The last question was read by the stenographer.)

A To pay labor where there was no ready cash on hand and we paid them with the checks.

Q Calling your attention to the fact that this was the first week after the Custodial Receiver was appointed: Does that recall anything to your recollection? A. Yes.

580 *Philip Baer, direct.*

Q As the reason for their being paid by check?

A Well, the first time these were small accounts and I was over in Passaic and I drew the checks right there and then.

Q Now, why didn't you pay by checks thereafter?

581 Mr. Berry: I object to the question as immaterial and irrelevant why he didn't pay by check afterwards.

The Special Master: I will allow it.

Mr. Berry: I ask for an exception.

Q Why didn't you pay these labor items after by check? A Because the men preferred to be paid in cash.

Q And made such a request upon you? A Yes.

582 Q I show you two further checks and ask you if you recall the circumstances under which they were given by you? A. Well, there was a time when we had no ready money to pay the laborers in cash.

Q To pay Mr. Ryder, you mean? A To pay Ryder in cash, and the time had gone over for a few days until we could get some ready cash again. So I gave him checks instead of cash.

Q You knew Mr. Ryder pretty well, did you not? A I knew him personally, yes.

583 Q So that these two items, then, you say you paid by check because you didn't have the cash at the end of the week when he was entitled to be paid? A Yes, I was in Passaic at the time and didn't have cash in my possession and I made out the checks.

Mr. Bowman: I now offer in evidence a personal check of Philip Baer dated May 13th, 1927, to W. J. Ryder for \$150, duly endorsed

*Philip Baer, direct.*

584

by him, and a check of May 20th, 1927, William J. Ryder, for \$226, a personal check, duly endorsed, and ask that they be marked in evidence.

(The checks referred to were received in evidence and marked S&B 17.)

Q Do you understand that Mr. Seaman has entered these items as labor disbursements during the week in which the work was done? 585

Mr. Berry: I object to the form of the question and also on the ground that it calls for a conclusion of fact.

The Special Master: Sustained.

Mr. Bowman: I withdraw the question.

Q Have you seen Mr. Seaman's weekly sheets of labor? A Yes. 586

Q And were you familiar with them during the time that he was keeping them? A Yes, sir.

Q In what form were the payments that are shown by these checks entered on these weekly sheets, if you know? A They are probably combined with some other weeks. They probably had gone over a week. These checks probably with some cash made the amount that Mr. Seaman had to pay weekly, and these checks, many of them, were probably for more than one week's wages. 587

Q So that these two checks, however, are contained, as you understand, in the claim that has been filed and in this Exhibit 5? A Yes, sir.

Q Under labor items? A Yes, sir.

Q Now, since your claim was filed in connection with the contract for the screens with the Arlington people, have you personally had to pay a judgment? A I have.

588 *Philip Baer, direct.*

Q Have you a satisfaction of that judgment here? A Yes, sir.

Q I ask you to produce it. A (The witness produces the paper referred to.)

*By Mr. Bowman.*

Q This, as I understand it, was work which was ordered and put in during this period of completion? A Yes, sir.

Q And because of the fact that you ordered it personally a judgment was taken against you which you have satisfied and paid? A. Yes, sir.

Mr. Berry: I want to object at this time to the acceptance of that document. The work was done after the appointment of the Receiver.

The Special Master: You can enter your objection.

590

Mr. Bowman: It totals \$340.10. This is a satisfaction piece in the Municipal Court of the City of New York, Borough of Manhattan, Sixth District, the plaintiffs being Max Hirschman and John Jacobus doing business as the Arlington Window Shade Company; the defendant Philip Baer; judgment entered November 30th, 1927, \$340.10, and satisfied as of April 8th, 1929.

591

(The paper referred to was received in evidence and marked S&B 18.)

Q Can you state whether or not this item was entered in your claim was filed? A It was.

Q It was? A Yes, sir.

Q Show us where it is?

Mr. Bowman: Schedule A annexed to the claim shows this item entered as week ending October 15th.

*Philip Baer, Direct.*

592

The Witness: Arlington Shade Company.

*By Mr. Weinberger:*

Q Where is the check? A I couldn't find it. I couldn't get the check; so I got that.

*By Mr. Platt:*

Q Did you pay the full amount of the judgment or did you make a settlement? A I paid the full amount. 593

*By Mr. Bowman:*

Q I show you a resolution as of April 13th, 1927, respecting the Passaic Arms opening a bank account with the Passaic National Bank & Trust Company of Passaic, New Jersey, and ask you if that is the first time the Passaic Arms ever authorized the opening of any bank account? A Yes, sir. 594

Mr. Whitehead: What was the date?

Mr. Bowman: April 13th, 1927.

Q With what money did you open that account? A I got \$325 from Mr. Gibson.

Q I show you Checks Nos. 1, 2, 3, and 4, being Exhibit R-1, R-2, R-3 and R-4. Were these checks drawn against this account? Do you know whether or not these are the checks drawn against that account? A Yes, sir. 595

Q Now, after these checks were drawn, what was the balance left in the account? A Five or six dollars.

Q Were any other funds ever paid in that account? A No.

Q Or any other checks ever drawn against it? A No, sir.

Q And what happened to the account? A As far as I know the balance is still there.

596 *Philip Baer, Direct.*

Q It was turned over to the Receiver, wasn't it?

A Yes.

Q Do you know where Mr. Gibson got the \$325 which he gave you? A Collected it from the tenants for rent.

Q Now, Mr. Baer, did you visit this job off and on? A Quite frequently.

Q Between March 10th and October 7th, 1927?

597 A Yes, sir.

Q And do you know that the completion work was done there as has been testified to by Mr. Seaman? A Yes, sir.

Mr. Berry: I object to the question as leading.

Mr. Bowman: I can ask him what was done.

The Special Master: It is leading.

598 Q Will you state just as briefly as you can what work was done there between March 10th, 1927, and October 7th, 1927? A Why, there were new floors laid; there were closets built in—kitchen closets; the doors were changed which had warped. New locks put on; cement bases laid; grading was done; kitchen cabinets purchased; rooms changed; closets being rebuilt.

Q Was the building leasable or rentable as of March 10th, 1927? A It was not.

599 Q And did this work which was done permit the apartments to be rented? A It did.

Mr. Weinberger: I object to it on the ground that it calls for a conclusion.

The Special Master: Yes.

Q Well, were the apartments rentable during that period? A Not until they were prepared to be occupied.

*Philip Baer, cross.*

600

Q Yes, but were they rentable during that period? A They were rentable during that period between March 10th and October 7th.

Q Did you confer with Mr. Seaman respecting the amount of money that was needed to pay labor and materials weekly? A I didn't confer with him; every day Seaman needed money to pay the payrolls he asked me; he told me that he required so much money, and I produced it. 601

Q What you didn't produce he produced? A What I didn't produce he produced.

Mr. Bowman: That is all.

*Cross examination by Mr. Weinberger.*

Q All the money that you either paid out directly or indirectly for labor performed or for merchandise or anything else in connection with the Passaic Arms, you paid by check, is that true? 602

A No, sir.

Q Well, you had bank accounts? A Yes sir.

Q And you had to withdraw your money by checks? A If I wanted to I did.

Q Well, you couldn't get money out of the bank any other way? A I didn't have to go to the bank.

Q Where did you go?

Mr. Bowman: I object to it as immaterial where he went or where he got the money. 603

Mr. Weinberger: I think it is material.

The Special Master: I think it is proper cross-examination.

Q Where did you get the money?

Mr. Bowman: Well, I don't see how that is pertinent. Suppose he got it from me.

604 *Philip Baer, cross.*

The Special Master: To show whether he got it or not.

Q Where did you get the money?

Mr. Bowman: I object to it.

The Special Master: Overruled.

Mr. Bowman: Exception.

605 Q Where did you get it? A When this trouble came on, my wife in order to help me out went in the hat business, selling hats in her apartment privately at \$3.50, which was sold for cash; probably a hundred or a hundred and fifty hats every week, and that is where I got the cash from.

Q How much did you get and where did you get it the first time? A I got it the first time in April.

606 Q What date? A I can't recall without the book—without the book being here.

Q What book? A My wife's record of the number of hats she had sold.

Q I am talking about the money you got. A I don't understand what you mean.

Q How much money did you get?

Mr. Bowman: I object to it as immaterial how much he got.

Mr. Weinberger: I want to show how much he paid out.

607 A Five or six thousand dollars, if you want the total.

Q How much? A Five or six thousand dollars.

Q You got five or six thousand dollars? A Yes.

Q From your wife? A Not all from my wife, no.

*Philip Baer, cross.*

608

Q How much did you get from your wife? A Probably two thousand—three thousand.

Q Probably? A Yes.

Q Well, did you keep a memorandum of whom you paid the money to? A I don't know what you mean by that question.

Mr. Bowman: He said he paid it to Seaman. All right. Go ahead.

609

Q When you got this money from your wife you got how much at a time? A Maybe \$220; \$150—\$75—whatever was needed; every time Seaman called upon me for money to pay the labor and to pay for materials or what. He said he required so much money and I got it from my wife.

Q All right. When was the first time?

Mr. Bowman: I object to it as immaterial.

The Special Master: I think it is proper, but I don't see that it is going to get us anywhere.

610

A Probably April.

Q April, 1927? A Yes, sir.

Q When you gave it to Mr. Seaman, do you know what Mr. Seaman did with it of your own knowledge? A I do.

Q Did you get a writing from him? A I did not.

611

Q Did you get any kind of memorandum that he took this money from you? A I did not.

Q Did your books on the Passaic Arms show that they were indebted to you or your wife?

Mr. Bowman: I object to it. The Passaic Arms has nothing to do with this.

The Special Master: I think it is not proper.

612 *Philip Baer, cross.*

Q Well, whom were you loaning the money to?

A I wasn't loaning the money to anybody.

Q What were you paying it out for? A For labor.

Q For whom? A For myself and Mr. Seaman.

Q At your own suggestion? A Not my suggestion. It was the suggestion of the Court.

613 Q Were you there? A I wasn't there.

Q You are basing it on what someone else told you? A On what Seaman and Foulds said.

Q You took no receipts of any kind from any laborers? A No, I didn't, no.

Q You don't know how much it was? A No, except—

Q Of your own knowledge you don't know? A I wasn't present when Seaman paid out the money.

614 Q Certainly not. And you relied on what he told you? A We went over the memorandums as he got them from week to week.

Q Mr. Baer, do you know how much money you gave to Mr. Seaman? Is there any means of knowing that? A I have, but not at this moment.

Q Where is it? A At home.

Q In what memorandum A The memorandum from him.

615 Q Can you produce it? A No question about it.

Q From when to when do you claim you borrowed this \$2,000 from your wife? A From the 10th day of March or soon after to the 7th day of October.

Q You borrowed \$2,000 from her? A Yes.

Q Did you borrow any money from any other person? A Yes.

*Philip Baer, cross.*

616

Q From whom? A I borrowed money from another person.

Q From whom?

Mr. Bowman: I object to that.

The Special Master: I think he has a right to ask that.

Q From whom? A Nathan Goldman.

617

Q How much did you borrow from him? A \$3,500.

Q And did he pay you cash or check? A He paid me by a check.

Q When? A September, 1927.

Q What bank did you deposit the check in?

A I may be incorrect—

Q Nathan Goldman, I am talking about. What bank did you deposit the check in? A The Corn Exchange Bank.

618

Q How did you draw the money out? A As I needed it.

Q How? To whom was it made payable? A To people I owed money to.

Q What people?

The Special Master: I don't think he understands you.

Mr. Weinberger: Mr. Corbin, I am very clear. He said he borrowed \$3,500 to pay labor.

619

The Witness: No, I didn't.

Mr. Weinberger: Wait a minute.

Q This \$3,500 was for what purpose? A For my personal purpose.

Q Nothing to do with the building? A Yes; money I had borrowed for the building and returned.

620 *Philip Baer, cross.*

Q You only borrowed \$2,000 you claim the maximum? A \$3,500 from Goldman.

Q What did you do with the \$3,500? A I deposited it in the bank.

Q Whom did you pay it to? A I paid this back to friends who I borrowed the money previously from.

621 Q Well, now, you borrowed money from Goldman to pay friends' debts that you owed previously?

A For the Passaic Arms.

Q For the Passaic Arms? Yes.

Mr. Bowman: Now, I object.

The Witness: I didn't borrow it from Heaven. It didn't come from you, sir. When I say it came from Goldman, it came from Goldman.

Q Did you pay Goldman back A What?

622 Q Did you pay Goldman the money back? A Mr. Seaman called upon me for money.

Q This particular—A No; that has nothing to do with that.

Q Well, what other ones? A Cash that he demanded from me.

Q Cash? A Yes.

Q Seaman says he borrowed from his wife. A He didn't say he borrowed at all, did he?

623 Q Well, how much did you pay, I am asking you? A Who pay?

Q You pay on this claim of yours? A About \$6,500 or \$7,000.

Q What means have you got of proving that?

Mr. Bowman: Why, his testimony. I object to the question.

*By Mr. Weinberger.*

Q Have you any receipts? A Receipts for what?

*Philip Baer, cross.*

624

Q For what you paid out. A I gave the money to Mr. Seaman.

Q Have—— Did you get any memorandum back? A From whom?

Q From the laborers who were paid. A No, I didn't pay laborers.

Q Did you take anything from Mr. Seaman? A No; only on his word of honor; that is all.

Q You are not sure as to what the amount was? 625  
A I can't tell offhand, no, sir.

Q What means can you tell by? A I can bring it to you.

By Mr. Weinberger: Let us have it.

*By Mr. Whitehead.*

Q Why didn't you bring it today? A I wasn't asked to bring it.

Q Didn't you know you were coming here in an 626 effort to support your claim? A This is a personal matter between Seaman and myself.

Q Didn't you know it involves an important question, how much you put in here? A I didn't think that question would ever come up.

Q You didn't think that question would ever come up? A Except the statement Seaman made—how much money he put in individually.

Q You said you had a book record at home? A No, I haven't said I had a book record at home. 627

Q What record have you? A No record except a little memorandum I put down every day when I gave Seamon money.

Q You have that? A Yes.

Q You can produce that? A Yes. That is only a pencil memorandum.

Q How was that kept? A As the money was turned over.

628 *Philip Baer, cross.*

Q Do you know where it is now? A I think I have it home, yes.

Q What was the date that you actually paid this judgment of the Arlington Window Shade Company? A This judgment wasn't paid at one time; it was paid from time to time; every month I paid off this judgment.

Q You paid it off in payments? A Yes, sir.

629 Q Over what periods, do you recall? A Oh, six or seven months, I believe.

Q Can you say whether it was paid after November, 1927? A The shades were ordered—

Mr. Bowman: He just asked you was it paid.

Q Was it paid after October, 1927, or November, 1927? A It was—the material was used in the building prior to that.

630 Q The judgment? A The judgment may have been paid after.

Q The judgment may have been paid after? A The judgment may have been paid after, but it was for the shades—for the balance of the shades, I guess it was paid; I thought I had it here, but I haven't got it here.

Q It was paid after that date. Do you know Mr. Baer, why you took no action to prove your claim with the Receiver? A Well, Mr. Whitehead, we always was under the impression that the things would be straightened out.

Q You thought you were paying the moneys out to finish your own building, didn't you?

Mr. Bowman: I object to that. It wasn't their own building.

Q It was for completing of the Passaic Arms, and you thought you were completing it and the

*Philip Baer, cross.*

632

matter of these encumbrances would be cleaned up and your company would continue to own the building, didn't you? A I have to answer that question?

Q Yes. Answer the question. A We paid out these payments, Mr. Whitehead, as you well know. We had several meetings during that time between March and October and tried to bring about a settlement. Mr. Foulds always told us and advised us that we would—probably the thing would be straightened out and we would get the building back and that we should go on and finish it up in view of the circumstances that took place, and we didn't expect it when the Receiver was made permanent. It was a great shock to myself, and both of us. We never dreamed such a thing was going to happen.

633

We began to say, "How are we going to get our money back?" because we had trouble with attorneys. We had trouble with Scheck, and before we could get somebody else we had trouble with Platt.

634

Q While you were paying this money in, you were doing it as the owners of the property with the expectation that the property would continue to be the property of the company after the matter of the encumbrances was cleaned up?

Mr. Bowman: I object to the question, because they were not the owners. The Passaic Arms were the owners.

635

The Special Master: I don't think the question is proper unless you say the Passaic Arms, because as individuals they weren't the owners.

Q You and Seaman were the owners and your wife?

Mr. Bowman: I object to that. We have in evidence that there were three stockholders.

636 *Philip Baer, cross.*

The Special Master: Well, it is all in evidence. It is all repetition.

Q You and your wife and Mr. Seaman owned the company, didn't you? A Yes.

Q You and Mr. Seaman paid money in to save the company and to save the property for the company; isn't that true? A Well, we put it in with  
637 the hope that we would get the property back. We spent the money for our benefit, and when the receiver was made permanent, we discovered that we were fooled. I will put it that way.

Q That you were fooled? A Yes.

Q By whom? A By several people.

Q Can you name any of them? A I don't want to name them now.

Q Why did you feel that way? A From the conversations that were held, and we were told,  
638 Scaman and myself, by our attorney.

Q By your attorney? A Yes.

Q From the time the Custodial Receiver was appointed to the time the Permanent Receiver was appointed, you felt that the company was not insolvent? A We absolutely were not insolvent.

Q You felt that the appointment of the receiver was improper? A Absolutely.

*Cross examination by Mr. Platt:*

639 Q You said you took no action and didn't do anything with reference to your claim because you had trouble with various attorneys? A Yes.

Q When did you employ Mr. Scheck as your attorney? A I believe in March, 1927.

Q You started putting money in the property around October, 1927. That is a period of six months at least, isn't it? A Yes.

Q Why didn't you do anything during that

*Philip Baer, cross.*

640

six months' period before you employed Mr. Scheck?

Mr. Bowman: He said Scheck was employed in March.

Q March, 1928. Why didn't you do anything in reference to your claim during the period between October, 1927 and March, 1928, when you employed Mr. Scheck? A Because Mr. Mulvaney, who was then representing the bonding company, and before we could get new attorneys we had no attorney for some time—Mr. Mulvaney said we didn't need an attorney until things began to change again, and that we would have time to get another attorney. So after that, we got Bowman & Alling. 641

Q Did you ask Mr. Scheck to submit a claim for you? A No, sir. 642

Q Did you ask me after I was employed by you to submit a claim for you? A You weren't employed long enough.

Q Who was your attorney in October, 1927? A Foulds.

Q Did you ask Mr. Foulds, or did you ask any advice of Mr. Foulds as to what you ought to do with reference to the claim after the Permanent Receiver was appointed? A Yes.

Q Going on his advice you did nothing with reference to filing a claim or a mechanic's lien claim? A All Foulds told us was if we filed receipts with him we should go on and finish the building, because he believed the thing would be ultimately settled. 643

Mr. Platt: Now, if the Master please, I want to press my motion again. The case for Mr. Seaman and Mr. Baer is in.

644 *Philip Baer, cross.*

Mr. Bowman: No. I haven't rested.

Mr. Platt: I am going to apply before Vice-Chancellor Lewis. I will give notice to the effect that I am going to ask the Court to make a supplemental order in the continuation of this hearing that you report your findings from the testimony as to whether or not they have a valid claim.

645

(The attorneys then agreed that the following be added to the order):

Mr. Platt: It is consented that the following be added to the order.

Ordered That the said Special Master report to this Court his findings as to the validity of the said Claims, the amount, if any, to be awarded the said claimants, and the priority of said claim.

646

(Adjourned to February 27, 1930, at 10:00 o'clock a. m.)

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*Andrew Foulds, Jr., direct.*

648

Between

LOUIS LEVY, *et als.*,

and

PASSAIC ARMS, INC.

Passaic, New Jersey,  
February 27, 1930.

649

Proceeded pursuant to adjournment, 10 A. M.

*Present:* The Special Master,  
Mr. Bowman,  
Mr. Whitehead,  
Mr. Berry,  
Mr. Weinberger,  
Mr. Platt.

650

ANDREW FOULDS, JR., called as a witness on  
behalf of the Claimants, being first duly sworn,  
testified as follows:

*Direct examination* by Mr. Bowman:

Q Mr. Foulds, during 1927 did you act as at-  
torney for the Passaic Arms and Mr. Baer and  
Mr. Seaman? A I did.

Q Do you recall a time in March when Mr. Sea-  
man came to you respecting the appointment of a  
custodial Receiver for the Passaic Arms? A I  
do. 651

Q Did you thereafter visit Vice-Chancellor  
Lewis respecting that matter? A I did.

Q Can you give us the date? A March 14th,  
1927.

Q Now, will you just state what conversation  
you had with Vice-Chancellor Lewis at that time?

652 *Andrew Foulds, Jr., direct.*

A I had received from Mr. Seaman the order to show cause, and called at the office of Weinberger & Weinberger, the Complainant's solicitors, and obtained a copy of the bill, and then went with Mr. Seaman to the Chancery Chambers in Paterson and spoke to Vice-Chancellor Lewis about it. He sent downstairs for Mr. Murner.

653 Q Well, was there any conversation before he sent for Mr. Murner? A Well, I told him that I felt that the order was improvidently granted and that he had not been informed of the facts.

Q What did you say respecting the facts? A I said that the building was, as I understood it, in such condition that it could be finished within a very short time, but we were just on the eve of completing the enterprise when the Receiver had come in and injured the front door, in fact, had closed the building while there were some workmen in it, and if we were let alone for a short time we could finish the building and have it a going project.

654

Q Go ahead. A The Vice-Chancellor sent down for Mr. Murner, or we got him in some way. He came up there and the Vice-Chancellor asked him about this injury to the door and so forth, and he denied that he had done any unnecessary injury—denied, I think, that there were any workmen in the building at the time so far as he knew, *and the*

655 *Vice-Chancellor said that it probably would be better for all parties if the building could be completed, or something like that,* and I introduced Mr. Seaman as the architect and one of the parties in interest, and he said that he was willing to go ahead and finish the building, and I don't know in just what—what words were used, but as I entered in my book, *the Receiver was directed to permit*

*Andrew Foulds, Jr., direct.*

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*Seaman to proceed with the completing of the building.* That is my book entry. I believe the Vice-Chancellor said that we could apply on short notice to vacate the order. I told him, however, if we were going to finish the building, it would be better to continue the order, and it was continued until the fall, I believe from week to week.

Q Now, let me see this entry. Where is that?

A This one (indicating).

657

Q Now, Mr. Foulds, after talking to the Vice-Chancellor, did you have any talk with the attorneys for the Receiver? A After this talk with Vice-Chancellor Lewis, Mr. Seaman and myself interviewed Mr. Harry H. Weinberger on the morning of March 15th, the following morning.

Q Now, I don't want the whole conversation, so I will just ask specific items. Was there anything said in that conversation as to whether or not the Passaic Arms had any check account or any funds itself available? A That all came up in this way, as I recall it: Mr. Weinberger said that the Passaic Arms was insolvent and had allowed its paper to go to protest and so forth. Mr. Seaman said that it had never had any paper protested. I believe he said he never gave any checks. We were in the front room of the bank, and Mr. Weinberger rang for the bookkeeper or girl or stenographer. He came back with someone else's check, I believe. It developed that the Passaic Arms didn't have any account.

658

659

Q And that Mr. Harry Weinberger had been wrong in his statement respecting it? A Yes, he was in error. He was referring to some other check. I don't recall whether—what check it was.

Q Now, then, after that part of the conversation what was said with reference, if anything, about the receivership and the going ahead with the work?

660 *Andrew Foulds, Jr., direct.*

Mr. Weinberger: What is the purpose of this? That is objected to.

661 Mr. Bowman: Giving notice to the Receiver of the fact that Mr. Seaman and Baer were going ahead and complete this work with their own money, and the facts as to what the attorneys for the Receiver did during all this period shows an acquiescence in their doing it, and a waiver, and, therefore, in my opinion, it raises at least a question of whether or not these men should not be compensated for the money they spent.

Mr. Weinberger: Mr. Foulds testified that Seaman was an officer of the company and volunteered to do it and asked permission of Vice-Chancellor Lewis to go ahead.

662 Mr. Bowman: Yes, while there was a custodial receiver there.

Mr. Platt: I object on the ground that it is immaterial. There was no duty on the Receiver or his attorney to prevent anyone from putting anything in the building.

The Special Master: I assume, Mr. Platt, that the answer is that the Receiver didn't do anything.

Mr. Platt: The Receiver didn't do anything—didn't do it with knowledge.

663 Mr. Bowman: All right. Now, there is a statement on the record that the judge told him not to do anything, to let these men go ahead.

Mr. Weinberger: Foulds didn't say that; Seaman asked permission to go ahead.

(At this point Mr. Foulds' testimony given at the beginning of his examination was read as follows:)

*Andrew Foulds, Jr., direct.*

664

“Q. Now, will you just state what conversation you had with Vice Chancellor Lewis at that time?

A. I had received from Mr. Seaman the order to show cause, and called at the office of Weinberger & Weinberger, the Complainant's solicitors, and obtained a copy of the bill, and then went with Mr. Seaman to the Chancery Chambers in Paterson and spoke to Vice Chancellor Lewis about it. He sent downstairs for Mr. Murner.

665

“Q. Well, was there any conversation before he sent for Mr. Murner? A. Well, I told him that I felt that the order was improvidently granted and that he had not been informed of the facts.

“Q. What did you say respecting the facts? A. I said that the building was, as I understood it, in such condition that it could be finished within a very short time, but we were just on the eve of completing the enterprise when the Receiver had come in and injured the front door; in fact, had closed the building while there were some workmen in it, and if we were let along for a short time we could finish the building and have it a going project.

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“Q. Go ahead. A. The Vice Chancellor sent down for Mr. Murner, or we got him in some way. He came up there and the Vice Chancellor asked him about this injury to the door and so forth, and he denied that he had done any unnecessary injury—denied, I think, that there were any workmen in the building at the time so far as he knew, and the Vice Chancellor said that it probably would be better for all parties if the building could be completed, or something like that, and I introduced Mr. Seaman as the architect and one of the parties in interest, and he said that he was willing to go ahead and finish the building, and I don't

667

668 *Andrew Foulds, Jr., direct.*

know in just what—what words were used, but as I entered in my book, the Receiver was directed to permit Seaman to proceed with the completing of the building. That is my book entry. I believe the Vice Chancellor said that we could apply on short notice to vacate the order. I told him, however, if we were going to finish the building, it would be better to continue the order, and it was  
669 continued until the fall, I believe, from week to week.”

*By Mr. Bowman.*

Q Mr. Foulds, you have stated that you could not give the exact words of the Vice Chancellor. Can you state your best recollection of what he said to Mr. Seaman respecting going ahead with the work?

670 *By the Special Master.*

Q Did he say anything? A He did say something, and the best recollection I have is all I have here in my record, that the Receiver was directed to permit Mr. Seaman to finish the work or to go ahead with the work.

*By Mr. Bowman.*

Q Well, that is so far as speaking to the Receiver. Now——  
671

Mr. Weinberger: No; that is the Vice Chancellor.

Mr. Bowman: I mean the Vice Chancellor.

Q What did the Vice Chancellor say to Mr. Seaman? A It was more in the nature of inquiring as to what work was to be done or something of that nature. I didn't feel that I was applying for directions to Mr. Seaman——

*Andrew Foulds, Jr., direct.*

672

Q Well, I am just asking you— A Mr. Seaman was there as the architect of the building and we were complaining because the custodial was doing something which we wanted to prevent. We weren't getting instructions as to what we should do; we were getting instructions as to what the Receiver should do.

Q Mr. Seaman has testified as follows respecting a part of the conversation between Vice Chancellor Lewis and himself when you were present. 673

(The stenographer then read the testimony referred to respecting the conversation between the Vice Chancellor and Mr. Seaman:)

"Q. Give us the conversation that happened. A. Mr. Foulds and I went to Paterson together and we went to the Vice-Chancellor's courtroom, and the Vice-Chancellor was busy with some other work. Mr. Foulds waited until he was through, and after everybody else completed their business, Mr. Foulds and I went to the Vice-Chancellor. Just what Mr. Foulds said I can't recall now, but Vice-Chancellor Lewis said that Mr. Weinberger had come into his courtroom late in the afternoon and said that the building known as the Passaic Arms had been abandoned by both the contractors and the owners and thieves had broken in and stolen very much of the property, and he also said that if a custodial receiver was not appointed forthwith the whole building would be carried away. 674 675

"Mr. Foulds told him such a statement was not truthful, and he went on and told him why it was not truthful. To substantiate that he called upon me to corroborate him.

"Mr. Lewis said, 'Who is this man?' Mr. Foulds said, 'This is Mr. Seaman, the architect.'

676 *Andrew Foulds, Jr., direct.*

“Mr. Lewis said, ‘You heard me say what Mr. Weinberger said. Is that statement true?’

“I said, ‘There isn’t a bit of truth in it, Vice-Chancellor; not one bit.’

“So, he said, ‘I am going to ask you some questions,’ and he asked me some questions about the thing.

677 “Q. Go ahead. I want the questions as you recollect them. A. He asked me if we worked on the building—if we would complete the building. I said, ‘Yes.’

“He said, ‘Have you got money enough to complete it?’ I said, ‘Yes, we will get money to pay the bills as we go along.’

678 “He said, ‘All right; you go and finish the building.’ He said, ‘Mr. Foulds, you bring Mr. Weinberger in court tomorrow morning.’ And with that I came away and left Mr. Foulds in the courtroom. He said he had to go to the sheriff’s office on some other business, and I came to Passaic and went on finishing the building.”

*By Mr. Bowman.*

679 Q You have heard read to you the testimony of Mr. Seaman respecting the special part of the conversation between Vice-Chancellor Lewis and himself respecting the finishing of the building in your presence. Can you tell whether or not that refreshes your recollection as to those words being used or words of that meaning being used?

Mr. Weinberger: I object to it on the ground that the witness has already testified to the best of his recollection what happened before the Vice-Chancellor with reference to the conversation especially concerning the finishing of the building. It is improper at this time

*Andrew Foulds, Jr., direct.*

680

to suggest to the witness the testimony of another witness so that he might, after he has already answered the question that he doesn't remember, try to inject, by a question of this character, the information elicited from another witness by comparison.

Mr. Bowman: You can always refresh a man's recollection by another man's testimony by a paper or by anything, and that is all I am asking. The answer is yes or no. 681

Mr. Weinberger: Furthermore I object on the ground that Mr. Foulds has already refreshed his recollection by certain documentary evidence of minutes which he kept from other minutes which he read there.

The Special Master: I don't think that is a proper question. I will have to deny it.

Mr. Bowman: Exception.

682

*By Mr. Bowman.*

Q Do you at this time particular recall part of the conversation between the Vice-Chancellor and Mr. Seaman—

Mr. Whitehead: I object to the question.

Mr. Platt: I object to the question. The question has been answered before.

The Special Master: I think it is proper. I will allow it. 683

The Witness: I recall generally the conversation.

*By Mr. Bowman.*

Q Well, give us all the conversation you now recall, calling your attention particularly to the talk between the Vice-Chancellor and Mr. Seaman.

684 *Andrew Foulds, Jr., direct.*

Mr. Whitehead: That is the same question that has been overruled.

*By the Special Master.*

Q Do you recall anything more than you have testified to concerning what the Vice-Chancellor said? A Merely generally that Mr. Seaman and myself felt that he could complete—  
685

The Special Master: I don't think that is an answer to the question—how you felt.

Q I say, do you remember anything more about what he said? A I can't attempt to give the conversation.

*By Mr. Bowman.*

Q Now, respecting the order to show cause: when it was returnable, what happened, Mr. Foulds? A The Vice-Chancellor told us when we were up there that we might move to vacate on short notice, and I felt it would be desirable to keep the order to show cause open and attempt to finish the building. We adjourned thereafter from time to time, the first adjournment being to March 28th. I have here the various stipulations continuing the motions.  
686

Q So, that was continued by stipulation signed by yourself as attorney for Passaic Arms, and Weinberger & Weinberger, the solicitors for the complainant? A Yes, sir.  
687

Q As Mr. Seaman was doing the work during March, April, May and June, do you recall whether or not certain reports were sent to you respecting the work that was being done? A They were.

Q What happened to those reports? A Well, I am not certain. When I was succeeded by John

*Andrew Foulds, Jr., direct.*

688

Milton of Jersey City, I packed up the pleadings in various cases together with cases that I thought might be important and handed them to Mr. Seaman to take over to Mr. Milton, or sent them over in some way. I am not certain whether I gave them to Seaman or not—that is my best recollection.

Q Have you in your possession at the present time any weekly reports in the nature of Exhibit S&B-5? A No, I haven't. 689

Q Attention has been called to a claim by a man by the name of Nefsky and the statement has been made that you ordered Mr. Gibson to settle the matter for \$125, the attorneys being Feder & Rinzler. Do you know anything about that matter? A Yes.

Q Can you state whether or not that matter referred to work done respecting the completion of the building? A It did. I had an interview with the plaintiff in the Passaic District Court concerning the work. 690

Q And whether or not they were claiming a personal claim against Seaman because he had ordered the work? A They were trying to hold Seaman personally liable for work done on the building.

Q And you were the attorney who made the settlement and had Mr. Gibson make the payment of \$125 to settle that? A I had no authority over Gibson. I reached a figure for settlement. 691

Q Well, were you familiar with Mr. Gibson's accounting which showed that he did make that payment? A Yes.

Q And you knew it was made? A Yes.

Q And that the settlement was made on that basis? A Yes, sir.

692 *Andrew Foulds, Jr., direct.*

Q As attorney for the Passaic Arms and Mr. Seaman and Mr. Baer, did Mr. Gibson consult with you respecting his acts as agent in the completion of the work? A I Think not.

Q Did you prepare his final account for him in your office? A If I did, it was typed from what he sent me.

Q Yes? A I am not sure.

693 Q That is what I want to know. A I am not sure.

Q You are not sure. All right. A I know that a pencil draft of his account was brought into my office, but I am not sure whether it was typed there or not.

Q I show you a letter dated March 12th. That is your letter written to Mr. Seaman? A May 12th.

694 Q May 12th, I mean.

The Special Master: 1927?

The Witness: 1927.

Mr. Bowman: I just offer in evidence the third paragraph of that letter.

Mr. Weinberger: That is objected to. How is that binding on the Receiver or anybody else?

695 Mr. Bowman: You haven't seen it yet (handing Mr. Weinberger the letter referred to). I withdraw the question.

Q Referring to the letter of May 12th, 1927, written by yourself to Mr. Seaman: does that refresh your recollection respecting any conversations with Mr. Weinberger, the attorney for the Receiver, as to giving the information respecting the completion work? A I have such recollection, yes.

*Andrew Foulds, Jr., cross.*

696

Q All right. What was your understanding or conversation with Mr. Weinberger respecting that matter? A That the examination before Mr. Murner, Receiver of The General Industrial Company,—whatever it was——

The Special Master: Engineering Company.

Q Engineering Company. A On April 22nd 697 and 28th, 1927, the expenditures being made by Mr. Seaman and Mr. Baer for the completion of the building were discussed and I believe it was entered in the minutes of that examination, particularly the second day; that is my recollection, although I don't think I have ever seen the minutes. I told Mr. Weinberger, as I recall, that we would keep and were keeping an accurate account of what was being done, and that account would be subject to his examination at any time, 698 or something of that nature, and then two weeks went by and I had not received the account. I wrote to Mr. Seaman this letter which you called to my attention, saying that I had not received his statement for the work done up to the first of the month.

*Cross-examination* by Mr. Whitehead:

Q Did you get a report from Mr. Seaman in reply to that letter? A Yes. 699

Q What did you do with it? A I have it here.

Q The report? A Yes.

Mr. Weinberger: Let us see it, please.

(The witness produced the report.)

Q Is that the character of report that Mr. Seaman sent you from time to time, Mr. Foulds? A What?

700 *Andrew Foulds, Jr., cross.*

Q Is that the character of report that Mr. Seaman sent you from time to time? A Generally, although some may have been more complete than that.

Q Well, I call your attention to the fact this report which is stated to be week ending May 7th, 1927— A Two weeks on that statement.

701 Q (Continuing)— and week ending May 14, 1927, sets out no figures at all as to items expended? A Correct.

Q Was that true generally of the report that Mr. Seaman sent you? A I believe that there were figures set out in some of the reports sent me.

Q You have no distinct recollection about that? A I can't say.

Q Have you any other reports in your file—

A I have one other for the week of June 4th, 1927.

702

Mr. Weinberger: Where is the list of these reports you had and Exhibit S&B-5? Let me see that.

Mr. Whitehead: I would like to offer these in evidence.

Q Who at that time was the attorney for—

Mr. Bowman: No objection.

703 (The paper referred to was received in evidence and marked CM-1, February 27th, 1930).

Q These two reports put in as exhibits would seem, wouldn't they, to indicate that this was generally the character of the report that Seaman was submitting? A I think not necessarily at all. It is impossible that the fact that this doesn't show any figures for the reason these weren't turned over. I don't know why these two sheets were kept, but I found this in my papers when I went over my papers.

*Andrew Foulds, Jr., cross.*

704

Q Are you able to say positively that you did turn over reports to John Milton? A That is my recollection.

Q Have you any recollection as to how many you turned over to Milton? A None at all.

Q Now, Mr. Foulds, when you went up to Paterson to see the Vice-Chancellor with Mr. Seaman, you went up primarily to object to the appointment of the Receiver at all, didn't you? A To see whether it wouldn't be possible to have the order vacated. 705

Q Yes. You felt, as you stated on your direct testimony that the order had been improvidently entered? A Yes.

Q And there was really no sense in the appointment of a Receiver? A A Receiver was not needed in the Passaic Arms; there was no ground for the appointment of a Receiver.

Q Mr. Seaman was quite upset about it, wasn't he? A Very much so. 706

Q You went up to see the Vice-Chancellor as soon as you could after you had been served with a notice of this order appointing the custodial receiver, didn't you? A The same morning the paper came to my hand.

Q And that was the thought in your mind when you went up there; it was a matter of protest against the custodial receiver as an improvident appointment, wasn't it? A Yes. 707

Q And it is a fact, isn't it, that you understood from Mr. Seaman that the building was practically done at the time? A Yes.

Q And that if the comparatively small amount of work necessary for completion was performed, then his obligations could be straightened out and the whole thing made a success? A I don't like the words "practically complete".

708 *Andrew Foulds, Jr., cross.*

Q Not practically, but if the comparatively small amount of work necessary to complete it was done, then the whole operation could be straightened out and made a success? A Yes; I felt it as feasible to complete the building in a short time.

709 Q And you felt it was not only feasible but also that it was desirable from Mr. Seaman's standpoint, or the owner's standpoint, that the building should be completed, didn't you? A Yes, sir.

Q Isn't it true that both you and Seaman rather impressed that view on the Vice-Chancellor? A We tried to.

710 Q You tried to make it plain to him that if the owners could finish up this work, that why, then, the matter of the lien claims and other difficulties could be straightened out and that this operation could be kept going in a successful fashion? A Sure.

711 Q Mr. Foulds, did Mr. Seaman have any talk with you about where he would get the money from to pay these bills or whether he was paying them or whether Murner was paying them or Gibson or what? A I think that Mr. Baer was borrowing some money from his friends and Mr. Seaman was getting some money from his wife or somebody, but I am very hazy. I wasn't paying particular attention to where the money was coming from. Of course, there was this Empire Bond proposition that you know of where they supposed there would be a lot of money realized.

Q Money was supposed to come from that direction? A Money was supposed to come from that direction, and they were to pay money themselves individually, I believe.

Q You have no definite knowledge of that fact? A Oh, no.

*Preston B. Seaman, recalled, direct.*

712

Q What was paid by them or what was paid by Gibson? A Well, I was given Gibson's account.

Q Were you given Gibson's account? A I did have several talks with Mr. Baer and with Mr. Seaman about the serious results to them of having their money tied up in the building.

Q You haven't any knowledge of what it amounted to? A No, although they may have told me. Mr. Baer particularly spoke of the serious result to him of having his money tied up in there. 713

Q But you sanctioned their going ahead and completing the building on the same theory you presented to the Vice-Chancellor?

Mr. Bowman: I object to that.

The Special Master: That is the point: if he sanctioned it.

Q You approved of Seaman and Baer going ahead and completing the building? A I wasn't called upon to approve it; I was trying to get the building completed. 714

Q Well, that is what I was getting at. That was the chief object and the desirable object from the standpoint of the owners to get the building done? A Yes.

Mr. Whitehead: That is all.

715

PRESTON B. SEAMAN, recalled, testified as follows:

*Direct examination by Mr. Bowman.*

Q Now, Mr. Seaman, did you have an opportunity yesterday to go over a copy of Exhibit CM-3? A Yes.

Q Calling your attention to the fact that there

716 *Preston B. Seaman, recalled, direct.*

are no items there for March 19th: was there any time during March when work was not being done upon that building? A There was not; no.

717 Q. Now, I show you three checks dated March 19th, being part of S&B-13, and call your attention to these dates: How does it come about that you haven't got these items in your statement that you gave which purported to show the work done on the building? A This was Mr. Baer's part of it. I knew nothing about this at that time. They were Baer's personal checks.

Mr. Bowman: The witness was shown three checks dated March 19th, one to W. J. Rider, the other to Mat Strong, and the other to John Kleinhammer.

718 Q With that to refresh your recollection can you state whether or not Exhibit CM-3 is a complete statement? A It is not a complete statement.

Mr. Weinberger: What is the amount of these checks? About how much?

Mr. Bowman: About eighty or ninety dollars.

Mr. Weinberger: The total amount being \$95.

719 Q Now, then, you were asked by the other side to find such checks as would indicate your putting in cash money into this building. Have you found such checks? A I found some of them, yes.

Q And they are produced here? A Yes, they are produced here.

Q Now, then, are there any checks among these that were actually made payable to any of the men or to any of the people that furnished material? A I think there were only two.

*Preston B. Seaman, recalled, direct.*

720

Q Will you pick those out?

Mr. Bowman: I ask that these be marked for identification.

(The checks referred to were marked S&B-1 for identification, February 27, 1930.)

The Witness: Beginning with February 26th and ending with September 30th, 1927.

721

*By Mr. Weinberger.*

Q Who was Cora B. Seaman? A My wife.

*By Mr. Bowman.*

Q Explain how you got the money on these checks. A She would draw a check to bearer or whomever it was. I would send down and get the cash for it. They were all cashed locally. They were small amounts. They were cashed locally.

722

Q Can you state whether or not all the money that is specified by these checks was used in connection with the completion of the building? A Yes.

*By the Special Master.*

Q The Passaic Arms? A The Passaic Arms.

*By Mr. Bowman.*

Q Are there certain of those checks which were actually made out either to a workman or to somebody furnishing materials? A There are two checks.

723

Q Will you pick those two out?

Mr. Bowman: The witness picks out of the batch of checks two checks, one dated April 30th, 1927, to the order of W. J. Rider for \$47.25, endorsed by W. J. Rider, and a check of May 2nd, 1927, to the order of National

724 *Preston B. Seaman, recalled, direct.*

Electric Company, \$71.91, endorsed by the National Electric Company.

*By Mr. Bowman.*

Q Who was W. J. Rider? A A carpenter.

Q Who was the National Electric Company?

A Electricians.

725 Q What did they do up there? A Put in—they did all the work, but they worked—they put in the night lights, and they made some changes.

Mr. Bowman: I ask that these two be marked specially.

(The checks referred to were marked S&B-2, February 27, 1930, and S&B-3, February 27, 1930.)

726 Q Mr. Seaman, at my request did you look through all your papers to see if you could find any of the bills covering the completion work which you testified was done and any of the slips for material that was paid? A Yes.

Q And are these which you now hand me what you could find among your papers at the present time? A Yes.

Mr. Bowman: I ask that they be marked in evidence.

727 Mr. Weinberger: Objected to for the reason that there is a bill in there for \$5,400-and-some-odd, which wasn't paid.

Mr. Bowman: I am offering them.

Mr. Weinberger: They are objected to on the ground that it is a statement of fact that is not true.

Mr. Bowman: All right. Pick that one out.

Mr. Weinberger: It is objected to on the

*Preston B. Seaman, recalled, direct.*

728

ground that it again appears that there is a bill in here, Richardson & Boynton, which was paid by the Passaic Arms. It is very misleading.

The Special Master: I would like to have him pick out first those he paid and those the Passaic Arms paid.

Mr. Bowman: I am not offering these as being paid bills or anything like that; I am merely offering them as bills rendered to Mr. Seaman to show it was Seaman who was ordering the work and he was billed for the work. It is not to prove any moneys paid. 729

The Special Master: For that purpose they are admissible.

(The checks referred to were received in evidence and marked S&B-4, February 27, 1930.)

Q Now, Mr. Seaman, Mr. Foulds has testified that whatever documents and papers went to Mr. Milton, he gave you for transmission. Does that refresh your recollection respecting that fact? A Yes, sir. 730

Q Can you testify whether or not among those papers that you were given to transmit were these reports showing your disbursements and such documents of the nature of S&B-4?

Mr. Whitehead: I object to it as leading. 731

Mr. Bowman should ask what they show.

The Special Master: Yes.

Mr. Bowman: I withdraw the question. I am trying to shorten this.

Q Do you recall what the papers were that you took from Mr. Foulds to Mr. Milton's office? A I can answer that in my own way.

732 *Preston B. Seaman, recalled, cross.*

Q Yes. Answer it. A Mr. Foulds said there was a package of papers to be sent to Mr. Mulvaney at Mr. Milton's office. I stopped at Mr. Fould's office and took the package of papers and took them across to Jersey City to Mr. Mulvaney.

Q After you got there were they opened? A Mr. Mulvaney opened the package and I saw the copies of my reports among them.

733 Q I ask you whether or not these reports were similar documents as this S&B-4? A Yes.

Q At my request did you go again to Mr. Milton's office since the last hearing here to see if they found these documents? A I spent an hour and a half with Mr. Milton. We made a systematic search in his office.

Q Could they be found? A They couldn't be found. Mr. Milton said he would give a supporting statement to that effect, if you want it.

734

*Cross-examination by Mr. Weinberger.*

Q You remember seeing a batch of checks, one dated February 28th, 1927, to R. E. Carey, \$10? A Yes.

Q Who was R. E. Carey? Where does he live? A I don't know where he lives. He has a grocery store.

Q In Passaic? A Yes.

735

The Special Master: Right across the street.  
The Witness: On Bloomfield Avenue.

Q Is that where you bought your groceries? A Some of them.

Q This is your wife's check for \$10? A Yes.

Q Dated February 28th, 1927? A Yes.

Q What became of this money? A I spent it in the Passaic Arms.

*Preston B. Seaman, recalled, cross.*

736

Q \$10 at a time? A If I gave six checks I couldn't get them cashed in Passaic here. It would be a series of checks, the same day.

Q Here is a check dated February 28th, 1927, \$10. A Yes.

Q Cashed by R. E. Carey, endorsed Frank D. Palmer. Who is Frank D. Palmer? A I don't know.

Q How do you recall what this went for, or don't you know? A I certainly do know. 737

Q You do know what? A That the \$10 came to me and I spent it at that time.

Q For what? A For labor and materials in the Passaic Arms.

Q Did you get a receipt for it? A I may have gotten some receipt for the material.

Q Did you get any receipt for the labor? A No receipt for labor.

Q Do you know whom you paid this one to (indicating)? A Yes. 738

Q What particular one did you give this money to? A I may have given \$3 for material and \$7 for labor; I don't know that.

Q \$10 to bearer, endorsed again "R. E. Carey," dated February 26th. What was that for? Same answer? A Same answer.

Q March 2nd, "bearer," \$10. A Same answer.

Q March 2nd, \$20. A Same answer.

Q March 8th, 1927, \$15? A same answer. 739

Q Do you know a man by the name of H. Marshall? A I don't know who he was.

Q What? A My son may have gotten that cash for me. I don't know Mr. Marshall, no.

Q This check is made by Cora B. Seaman to H. Marshall. A Yes, because Allen went down and cashed the check. I didn't.

740 *Preston B. Seaman, recalled, cross.*

Q Well, it was H. Marshall, A I don't know, I know I got the face value of the check and I spent it for the Passaic Arms.

Q You don't know H. Marshall, or where he lives? A No.

Q Or who he is? A No, or who he is.

Q March 12th, 1927, \$15. Same answer? A Same answer.

741 Q As you gave to the prior Marshall check. \$20, March 18th, Allen B. Seaman: what was that for? Same answer? A Same answer.

Q \$20, bearer, March 22nd: same answer? A Same answer.

Q R. E. Carey, \$10? A Same answer.

Q What? A They are all the same answer.

Q All the same answer. The next is for \$20, April 1st. A You have the check there.

742 Q Same answer? A Same answer for all of them.

Mr. Bowman: I object to any further burdening of this record.

Mr. Weinberger: I want to get the amounts of them.

Mr. Bowman: You can put them in evidence.

Mr. Weinberger: No. I want to find out.

Mr. Bowman: All right, go ahead.

743 Q Who is J. W. Hemming & Son? A He was a butcher here.

Q Same answer? A Same answer to that, yes.

Q Who was Detiny Broome? A My brother-in-law.

Q Check made up to Detiny Broome, \$150, July 1st, 1927? A That was for the Passaic Arms.

*Preston B. Seaman, recalled, cross.*

744

Q Why was the check made to your brother-in-law? A So he would cash it.

Q He would cash it? A He would cash it.

Q And you kept this money and put it in the building? A I certainly did.

Q Bush & Walsh, \$10: same answer? A Same answer, cash.

Q Cash? A Cash.

Q Allen B. Seaman; a check was made out to him? A Yes. 745

Q Why? A He went and got the cash.

Q Mr. Wheeler; who is that? A I don't know who that is.

Q What? A I don't know who that is.

Q Same answer? A Same answer, yes.

Q Take a look at this check. A It was drawn for cash.

Q For what? A It was drawn for cash, so I would get the cash. 746

Q Do you know Edward Steinach? A No, I don't know him.

Q Is that the only means by which you ever got the money? A It may not have been; it may have been.

Q What do you mean by that? A You asked me to produce some evidence that I really spent money in the building—where I got the money. The evidence shows where I got the money. 747

Q Does that show where you got all the money? A No.

Q Where else did you get the money?

Mr. Bowman: I object to it. This is not redirect.—I withdraw the objection.

*By Mr. Weinberger.*

Q Did you get money from anybody else? A Did I get money from anybody else?

748 *Preston B. Seaman, recalled, cross.*

Q Yes. A I had some money of my own like that, yes.

Q Where? A Simply had it in my pocket.

Q Simply had it in your pocket? A Yes.

Q How much was it? A \$25—\$50.

Q You don't know where you got any money from outside of your wife? A I certainly do know where I got money from outside of my wife.

749

Mr. Bowman: Tell us.

The Witness: It was my money. I got it from the bank.

Q What bank? A The Chatham & Phenix Bank.

Q You said that you would produce these vouchers. A I didn't say I would produce these vouchers.

750 Q Where are these vouchers? A I don't know where these vouchers are. They are packed up some place. I can't find them. I searched two days and I can't find them. That account was closed.

Q What? A That account was closed.

Q Can you tell any one particular amount you paid to anybody from the checks of the Chatham & Phenix Bank? A That amounts to about a little over \$1,000. I only put a little over \$1,000 in the place.

751 Q That is all you put in? A Yes, that is all I put in. The rest was put in by Baer.

Q So that all you put in was \$1,000 or what these checks show, plus \$25 or \$50 additional, making about \$1,000? A I don't see why you say about \$25 or \$50 additional.

Q It may have been \$1,000? A It may have been \$1,000. I say the thing don't show. \$1,709.94.

*Preston B. Seaman, recalled, re-direct.*

752

Q Is that complete? A That is all I put in it, yes.

*By Mr. Bowman.*

Q \$1,709.04; that includes everything?

*By Mr. Whitehead.*

Q That is all you put in? A Yes.

Q Were you in receipt of any income at that time? A Yes. 753

Q From this work or from investments? A This was an estate.

Q From an estate? A Yes.

Q Whose estate? A My father's estate.

Q Who was paying the household bills at that time? A They all—Mrs. Seaman paid all of them.

Q Mrs. Seaman paid all the bills? A Yes.

Q During that period she paid them? A Yes, during that period she paid them.

Q You were trading with Carey right along, weren't you? A Not altogether. We traded some with him. 754

Q Were you trading with him for cash or on account? A Always on cash.

Q Always on cash? A Everything was for cash.

Q If you bought anything there you paid cash for it? A Well, if you call a check cash.

Q Yes, but you didn't run bills? A No, we didn't run bills. The only people we run was the paper bill, and we paid every month. 755

Mr. Whitehead: That is all.

*Re-direct examination* By Mr. Bowman:

Q At my request did you pick out the checks for March, 1927, that were paid by your wife covering household bills? A Yes.

Q Are those the checks you were able to find

756 *Philip Baer, recalled, direct.*

for that month? A Those are the checks that I was able to find for that month, yes.

Mr. Bowman: I ask that they be marked for identification.

(The checks referred to were marked S&B-5 for identification, February 27, 1930.)

*By Mr. Weinberger.*

757 Q Your son's salary was included in the labor?

A My son never got any salary.

Q Nothing at all? A Nothing at all.

Q He worked for nothing? A He worked for nothing. He is a high school boy.

Mr. Weinberger: That is all.

Mr. Bowman: That is all.

758 PHILIP BAER, recalled, having been previously duly sworn, further testified as follows:

*Direct examination by Mr. Bowman.*

Q Mr. Baer, since our last hearing did you and Mr. Seaman get together and make up a statement of the amounts of money you furnished for this completion work? A Yes.

Q And is this such a statement (indicating)? A Yes.

759 Q. And you say that is correct to the best of your knowledge and belief? A I do.

Q Then, how much money did you personally furnish between February 26th, 1927, and October 15th, in the way of actual cash to Mr. Seaman? A \$8,085.

Q What is the amount of the checks that you paid on this from February 18th, 1927, to July

*Philip Baer, recalled, cross.*

760

21st, including the Arlington Shade Company judgment? A \$2,634.09.

Q Making a total furnished by you towards the completion of this work of how much? A \$10,719.09.

Mr. Bowman: All right.

*Cross-examination by Mr. Weinberger.*

761

Q Mr. Baer, you produced all the payments you have made. You always paid by check, you testified?

Mr. Bowman: I object to that question.

He never said that.

A I never said it.

Q You never said it. A No.

Q You testified here last week that the total amount you put in from every angle and source was between five and six thousand. Which is true? What you testified last week or what you testified this morning? A What I testified this morning, because I didn't have the records with me. I have the records with me today. 762

Q So what you testified last week was false?

Mr. Bowman: I object to that.

The Special Master: It wasn't correct.

Q Well, where are the checks you produced last week? A Over here. 763

Q What is the total amount of the checks? A \$2,634.09.

Q What other moneys did you put in? A Cash.

Q Where did you get the cash from?

Mr. Bowman: I object to that. That has been all gone over.

764 *Philip Baer, recalled, cross.*

Mr. Weinberger: Well, he swore last week \$5,000.

Mr. Bowman: He told you there had never been an accounting between him and Seaman and you pressed him for the total amount.

Q Now, Mr. Baer, where are the checks you had last week? A Here (indicating).

765 (The checks referred to were marked S&B-6 for identification, February 27, 1930.)

*By Mr. Weinberger.*

Q There is a check in here for \$100 to Mr. Foulds. That went in the building? A No; that is not on the record.

The Special Master: What is the date of it?

766 Mr. Weinberger: March 4th, 1927.

The Witness: That isn't on the record.

*By Mr. Weinberger.*

Q Will you pick out all the checks that are not on the record? Where are those checks that are not in the record?

Mr. Bowman: I object to that. You are not entitled to see anything that is not on the record.

767

Q What is the total amount of these checks (indicating)? A \$2,293.99.

Q So that all the moneys you paid by check, with reference to moneys you claim went into this building, amounts to \$2,293.99? A Yes, paid by check.

Q Is that true? A Yes.

Q Now, will you tell me why it was that you

*Philip Baer, recalled, cross.*

768

made any payments in cash at all? A Because the laborers had to be paid in cash.

Q And did you pay laborers in cash? You?

A Not directly, no.

Mr. Bowman: That has all been gone over on direct.

Q Where did you get the money that you drew out in cash? A I didn't draw out any money in cash. 769

Q Well, that you paid out in cash? A Where I got the money?

Q Yes. A I told you last week. I will repeat it again.

Q Repeat it. A When this trouble started in, my wife, in order to help me out, started a hat business in her apartment.

Q She gave you how much a week? A She gave me whatever I needed a week. 770

Q How much? A I will tell you in a few moments. I also put in my salary every month.

Q You didn't testify to your salary last week? A You didn't ask me about my salary last week.

Q I didn't ask you where you got the money? A You didn't last week.

Q You didn't mention a man by the name of Goldsmith? A Goldman.

Q Goldman. A Yes, I mentioned him. 771

Q This week you put in your salary? A You asked me where I got the money from.

Q Your checks total \$2,293.99? A Yes.

Q You claim this morning the difference between \$5,000 and \$10,719? A Yes.

Q Where did you get that \$5,000? A The difference between that?

Q Yes. A I got it from my wife, my salary, and from borrowed money.

772 *Philip Baer, recalled, cross.*

Q How much did you get altogether from your wife? A \$2,580.

Q By check? A By cash.

Q Cash? A Yes.

Q Well, your wife had a check account; why did she give you cash? A Because she sold hats for cash every day.

773 Q She sold hats for cash every day, but nevertheless she gave you checks? A Well, she had to put some money in the bank. When I needed cash, she gave me cash.

Q She gave you cash? A Yes.

Q Did you keep a record of it? A Yes.

Q Where? A In my book here.

Q Let us see the book. Now, when did your wife give you cash for the first time? A February 25th.

Q How much? A \$150.

774 Q Let me see that book. She gave you cash of \$125?

Mr. Bowman: He didn't say \$125.

Q \$150, is that right? A Yes.

Q When was the next time? What did you do with that money? A Turned it over to Mr. Seaman.

775 Q Where it went from there on you don't know? A I know it went to pay laborers in the building and material.

Q That is what he told you? A I know it went that way.

Q That is what he told you? A That is what he wanted the money for.

Q That is what he told you? A Well, he told me he needed \$150 to pay laborers and whatever was required, and I produced the money.

Q The next item was when? A March 4th.

Q From your wife, I am talking about? A Yes.

*Philip Baer, recalled, cross.*

776

Q And the next was \$100 in cash from your wife? A \$100, yes.

Q What was the next time you got money from your wife in cash? A March 25th.

Q What? March 25th.

Q How much cash? A \$300.

Q What was the next item? A April 1st.

Q In cash? A \$350.

Q Does the book show what you did with the money? A What? 777

Q Does the book show what you did with the money? A Yes, sir.

Q What you did with the money? A Yes, sir.

Q Did you give cash to Mr. Seaman? A I did.

Q You got the cash from your wife? A Yes.

Q And that is the profit she made in her business? A Not the profit she made in her business.

Q What was it then? A That would be the amount of money she had taken in. 778

Q How much did she take in a whole week? A Sometimes——

Mr. Bowman: I object to that.

Mr. Weinberger: I am attacking the credibility of this man's statement for the reason that I am going to check up with the income tax record of the Government. I am going to produce the income tax records of this man's wife's business. 779

The Special Master: You have the right to cross-examine, but you ought to stop some time.

(Argument.)

Mr. Weinberger: All right. I won't press it.

780 *John Paul Gibson, direct.*

JOHN PAUL GIBSON, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

*Direct examination by Mr. Bowman.*

Q Mr. Gibson, we have already marked in evidence the contract under which you acted as agent for the Passaic Arms during 1927 and we have also  
781 put in evidence S&B-8 which purported to be your accounting to the Court. Is that an exact and correct copy of your account?

Mr. Whitehead: That is not disputed.

A With the exception of the markings it seems to be a copy.

*By the Special Master.*

Q You mean the pencil notations? A Yes, the  
782 pencil notations. It seems to be a copy of what I gave to Mr. Weinberger when I turned over all my records.

*By Mr. Bowman.*

Q And the moneys that you set forth there as being expended by you were actually so expended?

A Yes.

Q And the source of your moneys is also set  
783 forth there? A Yes, sir.

Q So far as you know, has this accounting ever been disapproved by the Court?

Mr. Berry: I object to it on the ground that it is incompetent, irrelevant and immaterial. The record will speak for itself.

The Special Master: That question has not been raised, has it?

*John Paul Gibson, direct.*

784

(Argument between Special Master and counsel).

Mr. Berry: I submit that is not the way to establish the fact, and secondly, it is incompetent, irrelevant and immaterial.

The Special Master: The account has been filed.

Mr. Bowman: All right.

785

*By Mr. Bowman.*

Q Have you ever been asked for a different accounting, or have you been advised that the accounting has been disapproved?

Mr. Berry: I object to that on the ground it is incompetent, irrelevant and immaterial and improper.

The Special Master: I will allow the answer because I don't think it will hurt anybody. 786

*By the Special Master.*

Q Has the account been approved?

Mr. Weinberger: I don't know. He was compelled and directed to turn it over or be adjudged in contempt, and he did it.

*By Mr. Bowman.*

Q Did you receive that letter from the Empire Bond & Mortgage Company (indicating)? A (No answer) 787

Q You know whether you got the letter. A Yes, I received it. I want to know what it said.

Q I am not interested in that.

Mr. Bowman: I offer it in evidence.

(The letter referred to was marked S&B-7, February 27, 1930.)

788 *John Paul Gibson, direct.*

Q Mr. Gibson, did you make this affidavit, a copy of which I now show you, at the request of Weinberger & Weinberger, attorneys for the Receiver? A Yes.

Mr. Bowman: I ask that it be marked for identification.

789 (The affidavit referred to was marked S&B-8 for identification, February 27, 1930.)

Mr. Bowman: I now offer in evidence a letter of Weinberger & Weinberger, dated July 10th, 1928, addressed to Mr. Alling and the enclosures.

(Letter referred to was received in evidence and marked S&B-9, February 27th, 1930.)

Mr. Bowman: And isn't this a motion you made asking that these matters be made preferred claims (addressing Mr. Weinberger)?

790 Mr. Weinberger: This notice speaks for itself.

Mr. Bowman: All right, then. I offer it in evidence.

Mr. Weinberger: It wasn't carried out. Put that in the record.

Mr. Bowman: It is still open.

(The paper referred to was received in evidence and marked S&B-10, February 27, 1930.)

791 Mr. Bowman: Is this the answer you received from Mr. Alling to that letter (addressing Mr. Weinberger)?

Mr. Weinberger: If you say it was sent, it was sent.

(The paper referred to was received in evidence and marked S&B-11, February 27, 1930.)

*By Mr. Bowman.*

Q Under your accounting, Mr. Gibson, you retained in actual money in all \$3,000 as your com-

*John Paul Gibson, direct.*

792

compensation just for running the apartment, didn't you? A And finishing the building.

Q In other words, what you did was that when the apartment was rented you took charge of getting that particular apartment fixed in shape to suit the party you rented it to? A That is right.

Q As a matter of fact, though, you paid other bills than the work ordered by you, didn't you, out of these rent moneys? A Yes.

793

Q In other words, some of the work that was ordered by Seaman was paid for by those items which you showed as expenditures of money? A Yes.

Q So, could you distinguish from this accounting S&B-8 what particular items that you personally ordered and those that Seaman ordered? A No.

Q Could you say roughly what percentage of this money that you paid out was paid on items ordered by Seaman and what percentage was ordered by you? Just roughly. A I can't say.

794

Q You couldn't? A No.

Q In other words, you made no distinction in paying money whether the items had been ordered by Seaman or whether the items had been ordered by you? A No.

Q Well, the answer is you made no distinction? A I made no distinction.

Q For example, I note that during May Mr. Seaman and Baer claim to have paid the janitor, whereas, apparently, you started to pay him in the latter part of June. How did you come to take over paying the janitor? A Very likely he didn't have enough money to pay him in May—or in April.

795

Q You don't show you paid him and they show they did. A I very likely did not.

796 *John Paul Gibson, direct.*

Q You very likely did not? A I very likely did not.

Q From June on you took over the paying of the janitor as is shown by your statement? A As is shown by my statement, yes.

797 Q Now, did the custodial receiver ever speak to you during all the time you were doing this work and renting these apartments? A He came up one morning while I was there and spoke to Mr. Seaman, and as he left he told me to be careful. That is all.

Q Did you ever hear a conversation between him and Seaman? A No.

Q Approximately what date was this? A I cannot recall the date. Some time during the course of my activity there.

798 Q Well, can you recall whether, for example, most of the rooms were rented at that time, or whether they weren't rented at that time? A I believe it was pretty well under way.

Q Pretty well under way? A Yes.

Q Give us the full conversation you had with Mr. Murner as you can best recollect it. A The only thing that I recall is, "You better be careful because these fellows are liable to get in trouble."

Q Be careful about what? A "Be careful of what you are doing."

799 Q Was there anything said about being careful about your accounts or your payments? A No. I told him I was keeping an accurate account of everything spent.

Q Can you tell us anything more that you told him at that time? A It was a very short conversation. It didn't amount to much.

Q That is the only time then during all this period that you had charge of collecting the rent that you talked to Mr. Murner? A Yes.

*John Paul Gibson, direct.*

800

Q Did you at any time ever talk to the attorneys for the Receiver, Weinberger & Weinberger?

A I believe I talked to Dr. Weinberger one time.

Q Who is Dr. Weinberger? A This gentleman here (indicating).

Q You better say Joseph. A All right, Joseph.

Q All right. When was this? A He came up to see me one Sunday. 801

Q What did he tell you at that time, or what was your conversation at that time? A I have no recollection of any conversation. I don't think we had much. I was busy and I just went through the building. He said, "Keeping pretty busy" or something of that nature. There was no business transaction of any sort.

Q Can you refresh your recollection? Was that after the apartments were pretty well rented, or before the apartments were pretty well rented? A 802  
During the course of the renting.

Mr. Bowman: That is all.

Mr. Weinberger: No questions.

Mr. Platt: I have hurriedly written up six different motions, one of which may be embraced in some of the others, but I thought it best to make them in this form. My first motion is that the entire claim of Messrs. Seaman and Baer be stricken out as against the Receiver or the premises on the ground that 803  
none of the alleged labor, or material or services were performed by order of any one properly authorized to give any such orders. My second motion is that \$17,000 of the alleged claim of Mr. Seaman be stricken out because there was no authority for his employment as architect and contractor at \$500 a week. My

804 *John Paul Gibson, direct.*

third motion is that the entire claim be stricken out as a preferred claim because, as a matter of law, it is not preferred as a mechanic's lien claim. My next motion is that the claim of Seaman and Baer be stricken out as a preferred claim because the testimony shows that they paid for some work and materials to complete the building with the hope and intent that the building would be turned back to the Passaic Arms, Inc., and the custodial receiver removed. My next motion is that the claim of Seaman and Baer be stricken out as a preferred claim because there is no evidence in the record of an order having been made by any one authorized to make such order to furnish labor, material or supervision of the building. My last motion is that the claim, if there is any claim chargeable against the building or the Receiver, be declared a general claim and subsequent in priority to mechanic's lien claims, and as a result of this last motion if you were to find there is a claim, if it is a general claim, it would require no further work on your part because there are not sufficient moneys in the hands of the Receiver to pay any general claims after the preferred claims have been paid.

806  
807 Mr. Weinberger: I want it noted on the record, so we cannot have any misunderstanding, that your case is closed, Mr. Bowman.

Mr. Bowman: Yes, our case is closed. I have rested.

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(An adjournment was taken to March 13th, 1930, at 10 A. M.)

*John Paul Gibson, recalled, direct.*

808

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Between

LOUIS LEVY, *et al.*,

and

PASSAIC ARMS, INC.

---

Passaic, New Jersey,  
March 13th, 1930.

809

Proceeded pursuant to adjournment, 10:00 A. M.

*Present:* The Special Master,  
Mr. Bowman,  
Mr. Whitehead,  
Mr. Weinberger,  
Mr. Platt.

(The morning session was given over to argument on the motions made by Mr. Platt at the previous hearing.)

810

(Recess.)

Afternoon Session—2:00 P. M.

JOHN PAUL GIBSON, recalled as a witness on behalf of the Receiver, having been previously sworn, testified further as follows:

811

*Direct examination* by Mr. Weinberger:

Q Now, Mr. Gibson, you were the agent for the Passaic Arms, Inc.? A Yes.

Q And hired under a contract as the agent to take care of the premises and rent them? A Yes, sir.

Q I show you a copy of an account which you had prepared showing the amounts of money col-

812 *John Paul Gibson, recalled, direct.*

lected from April 6th to September 31st, 1927, and also disbursements, and ask you if that is a correct copy? A Pardon me. Couldn't I suggest in the beginning: Shouldn't you enter my agreement? How I became interested in it?

Mr. Weinberger: All right. I withdraw the question.

813 Q When you were engaged as an agent of the Passaic Arms, Inc, was there a written contract entered into? A There was a letter first and then a written contract.

Q Is this the written contract you produce? A This is the letter.

Q That is the letter? A And this is the contract.

Q After, a contract was entered into? A Yes, sir.

814 Q The letter is dated May 2nd, 1927. Thereafter this written contract was entered into.

Mr. Bowman: Was it thereafter?

Mr. Weinberger: Yes—the 8th of March, 1927; the contract is March, and this is May.

The Witness: Well, I guess it is the other way around. Let us get that straight now.

The Special Master: Let him look at it.

815 Q This agreement made this 8th day of March was a contract? A Yes.

Q It is referred to as C.M. 3

Mr Weinberger: This letter was written May 2nd, 1927, and reads as follows:

“You are hereby authorized and employed in the capacity of managing agent for Passaic Arms Apartments, Passaic Avenue, Passaic, New Jersey.

*John Paul Gibson, recalled, direct.*

816

"As agent you will collect and receive the rents; to let and re-let the said premises or any part thereof; to make or cause to be made necessary repairs and alterations as may be deemed necessary by Passaic Arms, Inc., or its architect, and to make disbursements therefor as may be authorized by said Passaic Arms, Inc., or its architect. You will also make the monthly payments to the Empire Bond & Mortgage Corporation of New York City according to the building and loan agreement. 817

"The compensation for the above services to be the legal compensation as allowed under the schedule of the Real Estate Association.

"Very truly yours,

PASSAIC ARMS, INC.,

(By) Preston B. Seaman, President." 818

I offer in evidence the letter dated May 2nd, 1927, after the appointment of the Custodial Receiver, to Mr John Paul Gibson, and ask that it be marked as Exhibit R-1.

(The letter referred to was received in evidence and marked Exhibit R-1.)

Mr. Weinberger: I also offer in evidence the contract dated the 2nd of March, 1927, between Preston B. Seaman and Philip Baer and John Paul Gibson. 819

(The letter referred to was received in evidence and marked Exhibit R-2.)

*By Mr. Weinberger.*

Q Now, Mr. Gibson, pursuant to that contract and the letter hereinbefore referred to as Exhibits R-1 and R-2, did you keep a record of all the moneys you paid out and collected? A Yes, sir.

820 *John Paul Gibson, recalled, direct.*

Q How did you pay most of the money out?

A By checks.

Q And have you the checks here? A Yes.

Q Are these the checks which you paid out for the completion of the building and for labor, merchandise in the Passaic Arms, Inc.? A They are.

821 Mr. Bowman: Wait a minute. I object to that question. He didn't complete the building.

Mr. Weinberger: Yes, he did.

Mr. Bowman: Towards completing, but not—

Mr. Weinberger: Towards the completion of the building. Yes, all right; use the word "towards" instead.

822 Q Does your account set forth **whether** th  
are carpenters, janitors, and the various items?  
A Yes.

Q The persons to whom checks were made? A Yes, in detail.

Q And did you also pay some in cash? A Yes, sir.

Q And at whose suggestion did you pay them in cash? A I don't know as anybody—

Q Under whose direction? A Everything I did was under the direction of Mr. Seaman.

823 Q Did you at any time receive any directions from Mr. Murner as to turning over the money?  
A Yes, sir, I did.

Mr. Weinberger: Mark these checks Receiver's Exhibit 3.

(Thirty-six checks signed by John Paul Gibson and drawn on the Passaic National Bank and Trust Company were received in evidence and marked Exhibit R-3.)

Q I show you one check made out to Feder & Rinzler. Will you tell us what that was for? A This check was for \$125, made out to Feder & Rinzler. It has on the back that it is in payment for full settlement on claim by Nessky against Preston B. Seaman and Passaic Arms, Inc. 824

Q Who told you to pay it? A I was authorized to pay it by Mr. Foulds and Mr. Seaman.

Mr. Weinberger: That is one of the checks in Receiver's Exhibit 3. 825

Q Now Mr. Gibson, referring to Exhibit S&B8: You have here S&B Lumber, \$25; April 6, \$25. That was for lumber purchased— A For the building. It was for something I was doing to finish in particular apartments. I probably needed lumber for cabinets or whatever was necessary to complete my apartment, and it was ordered.

Q April 8th, Carpenters, \$84.60. What was that for? A That was for two carpenters who were working for me. 826

Q Was anybody else working there? A No.

Q Are you sure about that? A Absolutely.

Q And you paid the wages of the men? A Yes.

Q By the way, what were the names of the men working there? A I have a record there: John Kleinhammer, and the other one is—

Q Look at your own account and tell me. A William J. Ryder and John Kleinhammer are the two carpenters. 827

Q All right. Now, Mr. Gibson, I take it from the time you went into possession— by the way, when was that when you started your duties there? A March 8th, 1927.

Q All right. From March 8th, 1927, down to September 30, 1927, was there any work done by anybody except by persons that you paid? A Carpenters?

828 *John Paul Gibson, recalled, direct.*

Q Yes. A From March 10th?

Q From March 10th. A Yes, that is the only two carpenters who were in the building.

Q You were there daily? A Yes, sir.

Q And you paid them for all the work they did?

829 Mr. Bowman: I object to that. How does he know whether he paid them for all the work they did?

Q Did you pay them? A With two exceptions in the beginning. Of course, Mr. Baer produced a couple of checks which he paid because I didn't have enough money to pay them.

Q Do you recall when these two exceptions were? A Well, my records would show when I didn't pay them. Baer helped me in the beginning.

830 Q It was one or two occasions only? A Yes; not many.

Q When Mr. Baer paid the carpenters, is that true? A Yes, sir.

Q The bills for all the merchandise delivered to that building after you took possession on March 10th: who paid for that? A With the exception of the two instances Mr. Seaman mentioned in the beginning there, why, I took care of the bills that came in.

831 Q Now, Mr. Gibson, you have testified with the exception of the few instances which Mr. Baer produced checks for or Mr. Seaman produced checks for, that you paid out all of the material men and all the laborers the money which was due and owing to them for work done on the building? A During my time?

Q During your time, and your time was from March 8th, 1927, to September 30, 1927? A That is right.

*John Paul Gibson, recalled, direct.*

832

Q That is true? A That is right— well, now, the question of all the material isn't quite so, because Mr. Baer furnished some floor varnish that he paid for.

Q How much was that, about? I don't know.

Q What else? A Baer has checks for that because I have seen them.

Q What else? A Of course, that curtain business I don't recall quite how much was paid, but I paid some of it and Mr. Baer paid some of it— whatever the full amount of the shades were. 833

Q Would that show on Exhibit S&B-8 how much you paid to the curtain people? A Yes, sir.

Q The check is there? A Yes.

Q \$103, I think it was. A I think so.

Mr. Weinberger: Is that right, Mr. Bowman? 834

Mr. Bowman: I don't know.

The Special Master: I think it was one hundred and three.

The Witness: I wouldn't say.

The Special Master: But the check is there.

The Witness: Yes, the check is there. There is some evidence of it.

*By Mr. Weinberger.*

Q Well, now, Mr. Gibson, you have testified 835 there were only two carpenters on that job during all the months that you were there, is that true?

A Yes.

Q You were there from early in the morning to all parts of the day? A Various hours of the day.

Q Was there ever any work performed on Sundays while you were there? A No.

Q Renting the premises? A No.

836 *John Paul Gibson, recalled, direct.*

Q I show you a receipt dated August 9th, 1927, "Received from Mr. John Paul Gibson, \$63 for carpenter work done on Passaic Arms Apartment", signed by John Kleinhammer, and ask you if that is the form of receipt you took from him? A That and other receipts.

837 Q You paid in cash? A When I paid in cash I made him sign a receipt; if I paid by check I didn't.

Mr. Weinberger: I offer that in evidence.

(The receipt referred to was received in evidence and marked R-4.)

Q I show you a receipt dated August 2nd, 1927, signed by John Kleinhammer for \$41.81 for work done on the Passaic Arms Apartment as carpenter, and ask you whether he did work as a carpenter? A Yes.

838

Mr. Weinberger: I offer that in evidence.

(The receipt referred to was received in evidence and marked R-5.)

Q Now, I show you a receipt signed by I. Coler, dated September 13th, 1927, in full payment for plumbing, \$354, and ask you whether you paid Mr. Coler for the work done in the Passaic Arms Apartment? A Yes, I did, and made him sign for it.

839 Q You paid him in cash? A I cannot say just how it was. It may have been part in cash and part by check. Any way, that was the full amount.

Mr. Weinberger: I offer that in evidence.

(The receipt referred to was received in evidence and marked R-6.)

Mr. Weinberger: I offer in evidence a paper which has on it three receipts which read as

*John Paul Gibson, recalled, direct.*

840

follows: "Received from Passaic Arms, Inc., the sum of \$11.20 for carpenter work for week ending April 8, 1927," signed by "William J. Rider"; and also on the same paper a receipt for the sum of \$46.26 for carpenter work and hardware for week ending April 8, 1927, signed by William J. Rider; and also a receipt for the sum of \$27.20 for carpenter work for the week ending April 8, 1927, signed by John Kleinhammer, and down at the bottom of the page, "Examined and found to be correct," signed by Preston B. Seaman, architect".

841

(The paper referred to was received in evidence and marked R-7.)

Q You paid these moneys? A I did.

Q I show you another paper signed by William J. Rider in two separate places and in one place signed by John Kleinhammer, and ask you whether you paid these sums to carpenters for the completing of the Passaic Arms, Inc.? A I did, sir.

842

Mr. Weinberger: I offer that in evidence.

(The paper referred to was received in evidence and marked R-8.)

Mr. Weinberger: The amounts respectively being \$30.20 to Rider, \$77.70 to Rider, and \$47.18 to Kleinhammer, for the week ending April 15, 1927. The total is \$155.08 and "Examined and found correct," by Preston B. Seaman.

843

Q Did you pay that? A Yes.

Q Mr. Gibson, I show you a note bearing date May 10, 1927, made by Passaic Arms, Inc., Philip Baer, secretary and treasurer, endorsed Preston B. Seaman and Philip Baer, and ask you who paid

844 *John Paul Gibson, recalled, direct.*

that. How much is the amount, first? A The amount is \$117.25.

Q Who paid that? A I paid it.

Q It reads as follows: "May 10, 1927. Four months after date we promise to pay to the order of Abendroth Bros. \$117.25 at the National City Bank, Wall Street, New York," signed "Passaic Arms, Inc., Philip Baer, secretary and treasurer,"  
845 endorsed, "Preston B. Seaman."

Mr. Weinberger: I offer that in evidence.

(The paper referred to was received in evidence and marked R-9.)

Q I show you another note dated May 10, 1927, payable three months after date to the same party, Abendroth Bros., for \$117.25, made by Passaic Arms, Inc., Philip Baer, secretary and treasurer, endorsed Preston B. Seaman and Philip Baer, and  
846 ask you who paid that? A I paid it.

Q What for? Do you know? A Well, I can tell—I was trying to figure out what it was for.

Mr. Weinberger: I offer that in evidence.

(The paper referred to was received in evidence and marked R-10.)

Q I show you another note dated May 10, 1927, \$117.25, payable two months after date, made by  
847 the Passaic Arms, Inc., Philip Baer, secretary and treasurer, with the endorsement of Preston B. Seaman and Philip Baer and ask you who paid it? A I paid it.

Q It is to the same party? A Yes.

Mr. Weinberger: I offer that in evidence.

(The paper referred to was received in evidence and marked R-11.)

Q Was that from the funds of the Passaic Arms, Inc.? A From the rent.

*John Paul Gibson, recalled, direct.*

848

Q All these moneys you paid from the rent? A Yes, exactly.

Q Who was the painter on the job? A William Raisin.

Q Who paid him? A I paid him.

Q A check? A Several checks, and I believe there might have been cash, too.

Q Do you know how much the amount was? A It is all here.

849

Q Referring to what exhibit? A S&B-8.

Q Did Seaman or Baer pay him any money? A No.

Q I show you another note dated May 10, 1927, Abendroth Bros., \$117.25, made out the same way, Passaic Arms, Inc., Philip Baer, secretary and treasurer, and ask you who paid that? A I paid it.

Mr. Weinberger: I offer that in evidence. 850  
(The paper referred to was received in evidence and marked R-12.)

Mr. Weinberger: Together with a letter which you received from Abendroth Bros., Port Chester, New York, October 15, 1927, which reads as follows:

"Mr. John Paul Gibson,  
National Bank and Trust Company Building,  
Passaic, New Jersey.

Dear Sir:

851

We are returning herewith your note which was due October 10th and which you have taken up with your check in the amount of \$117.25.

Yours very truly,  
ABENDROTH BROS."

852 *John Paul Gibson, recalled, direct.*

*By Mr. Weinberger.*

Q I show you the following and ask you whether you paid these bills out of the rents which you collected from the tenants of the Passaic Arms and on what property the work represented by the bills was done and performed: William Raisin, \$2,050; H. W. Mills & Company, \$28.50; Reliable Furniture Company, \$40; Public Service Electric and Gas Company, \$347.67; National Electric Company, \$70.91; "Examined and found correction, Preston B. Seaman." A. R. Barton, \$3; Ice by Wire Corporation, \$70; Campbell, Morrell & Company, \$55; Slass and Ostuw Coal Company, \$126; Passaic-Bergen Lumber Company, \$381.40; John Kleinhammer, \$216.81, June 22nd to July 23rd; Allen D. Seaman, \$30; Denman Towers, twenty cents; William A. O'Brien, \$53.75; John J. O'Leary Company, \$187.45; Manhattan Rubber Manufacturing Company, \$81.70; W. J. Rider, \$101.20, August 2, 1927; John Kleinhammer, \$41.81, paid August 2, 1927; Samuel Smith & Sons, \$21.83; W. J. Rider, April 22, 1927, \$63, for wages for Saturday to Friday preceding; John Kleinhammer, \$38.25, paid April 22nd, 1927, for Friday to Thursday preceding; W. J. Rider, \$36.20 for lumber, cement and sandpaper; Joseph Kovalycsik, paid October 1, 1927, \$124, work repairing garage.

855 Now, all these bills which have just been read off to you, you paid out? A Yes.

Q From the rents collected by you from the Passaic Arms, Inc.? A Yes.

Q Did Seaman or Baer give you any money toward this? A No.

Mr. Weinberger: I offer them all as one exhibit.

*John Paul Gibson, recalled, direct.*

856

(The bills referred to were received in evidence and marked R-13. Twenty-eight bills comprise Exhibit R-13.)

Q Now, Mr. Gibson, I show you one of the bills in Exhibit R-13, dated May 4th, billed to Preston B. Seaman, from Samuel Smith & Son Company, a bill for \$21.83, dated April 8th, and ask you whether Seaman's writing is on the bottom of that 857 bill and whether you paid it? A Yes.

Q What does it say? A "Preston B. Seaman, architect, June 29, 1927. Mr. Gibson: Please send check," which I did.

Q How is it signed? A Samuel Smith & Son Company.

Q How is it signed? A In the receipt?

Q No; whom is it signed by? A Prestom B. Seaman, architect.

Q I show you a bill in Exhibit R-13 marked 858 "Allen Seaman bill for materials purchased on Pas-saic Arms," and ask you whether you paid out all those moneys aggregating \$30 as enumerated on this bill of Allen Seaman, who is the son of Preston B. Seaman? A I did. Allen D. Seaman laid out this money; so, I reimbursed him.

Q During your time did you engage anybody who wasn't paid by you? A No, sir; I did not.

Q Were you authorized to take care of spending all the moneys during the time that you were 859 there? A I was.

Q Did you keep a complete record of all the income and disbursements? A I did.

Q If you paid anyone in cash you got a receipt, did you? A I did.

Q If you paid by check you produced here the stub checks? A Yes.

860 *John Paul Gibson, recalled, direct.*

Q And all these items appear in your account?

A They do.

Q And are they a truthful account of what took place with the moneys? A They are truthful.

Q Now, were there any carpenters or plumbers or painters working on the premises or anybody else, Mr. Gibson, during your time who were paid by Mr. Seaman?

861

Mr. Bowman: Well, now, if he knows.

Mr. Weinberger: He was there all the time. He had charge of the money.

A. I don't quite fathom that question.

(The last question was read by the stenographer.)

The Witness: I can answer that question in this way.

862 Q Go ahead. A The carpenters, painters and plumbers——

Q With the exception of the few instances you referred to before? A Yes. Every one working on the building during the time that I had to complete any particular apartment was paid from the money I received from rents.

863 Q Well, now, was there any new work done outside of what you had done by these various carpenters? A Well, the best I can recall, I don't know that there was anything new.

Q Was there any other work finished outside of what you directed the carpenters to do and which they did, referring specifically to Kleinhammer and Rider? A Not for the occupancy of my tenants.

Q And you rented the entire building, didn't you? A I rented the building as far as it went.

Q There was no other work done outside of that, was there?

*John Paul Gibson, recalled, direct.*

864

Mr. Bowman: He is only talking about the apartments. There was lots of work done on the building.

A Of course, with this exception, O'Leary——

Q That was grading; that wasn't carpenter work. A Referring to carpenter work, there was no other carpenter work only what was done by my carpenters.

865

Q And they were the only carpenters who were working on the building? A Yes, sir.

Q You mentioned earlier in your testimony that there were two or three instances where you didn't have enough money and Mr. Seaman or Mr. Baer paid it out? A That is right.

Q Are those the only occasions where any moneys were paid out for carpenter work? A For carpenter work, yes.

Q Or plumbing work? A I paid all the plumbing work. 866

Q And the painting work? A I took care of all the painting work.

Q With reference to merchandise which was bought, as you received the bills, were they all delivered to you by Mr. Seaman? A No, they were delivered to the building.

Q To the building? A Yes.

Q And did you pay them later on? A Yes, but Mr. Seaman did buy some merchandise in the beginning there, which I think he mentioned. 867

Q Is that the only merchandise he bought of your knowledge? A Yes—well, towards the end whatever Allen Seaman bought I paid him back.

Q And Allen Seaman bought it under the directions of his father? A Yes.

Q And you gave Allen Seaman the money? A That is right.

868 *John Paul Gibson, recalled, direct.*

Mr. Bowman: He didn't give him the money. He testified he paid it back.

Mr. Weinberger: He advanced the money.

Mr. Bowman: Well, he paid him back.

Q You gave some money for them to open a bank account, did you not? A I didn't give them it with the intention of opening a bank account.

869 Q What, then? A I gave them a check for \$350 because Mr. Baer wanted it to pay for some material for the building, and I believe the shellac was the factor involved.

Q I show you four checks signed by Passaic Arms, Inc., one to Richardson-Boynton, one to Arlington Shade Company, one to Public Service, and one to Feder & Runzler, and ask you whether you know of your own knowledge they used that money to pay these things. If you don't know, say so. A No, I don't know.

870 Q Now, Mr. Gibson, do you know Mr. Kleinhammer? A Yes, I do.

Q And did you straighten out each week with him? A Yes. Of course, if it wasn't one week, it would have been the next. That makes a difference in the wages and the time they put in.

Q Was it the same with Mr. Rider? A The same with Mr. Rider.

871 Q And the same with Mr. Rasin? A Yes, the same with Mr. Rasin. He still has some money coming.

*By Mr. Platt.*

Q I notice you paid some bills after the appointment of the permanent receiver. For instance, you paid a bill on October 14th to Passaic Lumber Company for \$160.50, October 21st, \$22 to the Herald Job Printing Company; then there are

*John Paul Gibson, recalled, direct.*

872

some items that show you made certain payments from October 1st to November 2nd, 1927, totaling \$2,025; separate sheets; that is part of your account? A. It is not separate; it is a continuation there, isn't it?

Mr. Weinberger: It is on separate sheets, though.

Mr. Platt: No; here are the items. 873

Q You made payments from October 1st to November 2nd, 1927, of \$2,025. A Those are the dates.

Q From October 1st to November 2nd, you made certain payments? A Yes.

Q And most of those payments came after the permanent receiver was appointed. Or didn't you know the permanent receiver was appointed? A I didn't know. I continued until I was told to 874 get out.

Q Did you receive an order to show cause? Were you served with an order to show cause to account for all the moneys you had received? A I don't know.

Q Do you recall whether or not there was an order to show cause served on you? An order by the Vice-Chancellor directing you to account for all the moneys which you received and pay over the moneys to the Receiver? A I don't know 875 whether I was served; but I am sure I complied with the order according to what Harry Weinberger told me to do when I closed out.

Q This account which you submitted was submitted in obedience of that order? A Yes, by the authorization of Mr. Harry Weinberger.

Q And this account shows after deducting your commission and so on, that there was some money

876 *John Paul Gibson, recalled, cross.*

due you rather than owing from you to the receiver? A Yes.

Q To the extent of \$97.60? A Yes, which I never got.

Q This account also shows some personal guarantees on bills by John Paul Gibson? A That is right.

877 Q Certain bills that weren't paid on which you gave your personal guarantee, is that right? A Yes.

Q Have you paid any of those personal bills? A No.

Q Did the receiver ever see you during the period between March and September and authorize you to continue in your employment which originated under the contract? A No.

878 Q Did the receiver at any time ask you by what right you were collecting rents? You say you never saw the receiver. A Well, I saw him once.

Q Did you have any conversation with him at that time? A Well, I told that before.

Q Don't put it in again. A All right.

Mr. Platt: That is all.

*Cross-examination by Mr. Bowman:*

879 Q I notice on most of these checks you marked on the back what they were for. Was that put on when the check was issued, or did you put it on since? A I don't know.

Q Well, do you recall did you put it on at the time you were making up your account? A That I don't know.

Q Well, I show you a cashed check for \$50. How do we know you spent that on the Passaic Arms? A I am not asking you to consider that I spent it on the Passaic Arms because everything I spent is accounted for there.

*John Paul Gibson, recalled, cross.*

880

Q You put into evidence here some checks that don't cover payments on the Passaic Arms. A No.

Q Well, then, why is this \$50 check in there if you can't tell us what it was for? A Well, it is accounted for there. It might have been a janitor, salary, or cash for the carpenter or whatever—

Q I show you your account and I show you a check dated August 13th, \$50. Show me where that is accounted for on your account? A It is not accounted for—let us see. This here wouldn't have anything to do with the exact date there. The date here was probably the date it was entered that I paid so and so so much money, but that wouldn't have anything to do with the date there, because the date wouldn't be the same. 881

Q So, then, you are now telling us that you don't know and you can't point out on your account where \$50 that you got in cash on August 13th went? A No, not by that date, but— 882

Q That is an answer, and you don't need to tell us any more.

Mr. Weinberger: Let him finish.

Mr. Bowman: No. No is an answer isn't it?

Mr. Weinberger: He says, "Not by that date, but"—

Mr. Bowman: All right. 883

The Witness: Not by that date, but it is probably entered here on another date.

Q All right, tell me the other date that it is entered on. A I don't recall just exactly how that was paid out, but the money was taken out at that time for the use of some particular item that was paid for on the building. How it was

884 *John Paul Gibson, recalled, cross.*

paid out, why, that don't enter into the amount taken from the bank.

Q Did you keep all rents and all moneys of this Passaic Arms in a separate bank account? A No.

Q In other words— A Because there was lots of money—

Q No, no—

885

The Witness: I want to finish (continuing)—that I took out of my own pocket to pay labor which the Passaic Arms didn't have to meet the obligations.

Q Then, in other words, you did just the same as Mr. Seaman testified he did; he got cash money and paid the men and paid for materials, and then, you say that later you paid yourself by such cashed checks as this one of August 13th, 1927, is that correct?

886

Mr. Weinberger: That is objected to on the ground that this young man don't know what Seaman testified.

Mr. Bowman: He was here the whole time and he knows what Seaman testified.

Mr. Weinberger: That is not a proper question.

887 (The last question was read by the stenographer)

Mr. Weinberger: I object to it.

The Special Master: He is just asking "You did the same as Seaman says he did."

Mr. Bowman: He was here and heard the testimony. Only, this man paid himself back.

(Argument between Counsel and the Special Master.)

*John Paul Gibson, recalled, cross.*

888

The Witness: I got a receipt for what I paid out.

*By Mr. Bowman.*

Q Where is the receipt for that \$50? A There is a receipt for everything that was here.

Q I asked you one question: where is the receipt for the \$50? A I don't know.

Q Well, I show you another check for \$125, August 3rd, 1927. What did you pay that for? 889

Mr. Weinberger: Look at what is on the back first.

A It is very likely labor because that is what most of the cash was for, but the receipts will show that

Mr. Weinberger: What is the date of it?

The Special Master: August 3rd, 1927. 890

Q Then, you say you have receipts for that?

A Yes, for whatever labor I paid out.

Q Why didn't you put it down under date of August 3rd to show what it was paid for? A Well, whenever I paid out, I made it my business to have a receipt signed by the person whom I paid the money to, and it didn't make much difference.

Q I show you another check dated August 2nd, \$50. What did you pay that out for? A I wouldn't know off hand. 891

Q You wouldn't know off hand. All right. Now, you say that you put all of the rents and all of the moneys of the Passaic Arms in your own personal account? A Yes.

Q And mixed it with your own personal moneys?

A Yes.

Q And you put all the moneys you got from your other real estate transactions in the same

892 *John Paul Gibson, recalled, cross.*

bank account? A I wasn't doing anything else when I was working on this building, but this particular job I worked on day and night.

Q You worked on it day and night? A Sundays included. I was showing people around every day.

893 Q So, you couldn't have taken in another penny for services or anything else except this Passaic Arms during this period from March 8th to October 1st? A I wouldn't say that was so. I might have. What has that to do——

Q Answer the question. You mixed your personal funds with the moneys you got from this corporation's building? A Not the personal funds.

894 Q Well, you put it in your personal bank account? A No, that was my bank account for my real estate office in the National Bank Building, but I had another bank account in the City Trust Company.

Q What did you put in this besides these moneys? You told us you put in other moneys. A There might have been items that came in the office, but that never conflicted with the Passaic.

Q I am not interested in that. You didn't keep the money separate, did you? A No, there was no special account.

895 Q And this is all your personal bank account?  
A Bank account?

Q Yes. Now, do I understand you to say here on the stand under oath that there wasn't a single carpenter that ever did one penny's worth of work on Passaic Arms from May 8th until October 1st that you didn't pay?

Mr. Weinberger: He didn't say that. A I didn't say that.

*John Paul Gibson, recalled, cross.*

896

Mr. Weinberger: He said with the exception of two or three items. Don't say something that the young man didn't say.

*By Mr. Bowman.*

Q All right, then. When Mr. Seaman says, as he does, for the week ending March 5th that he had three carpenters there, do you deny that? A That was before my time. 897

Q All right. When he shows for the week ending March 12th that he had three carpenters there do you deny that? A Yes.

Q You do? A There was only two. I have a receipt, for that week.

Q You have a receipt for March 12th? Show me any receipt for March 12th. A (after hesitating) I better withdraw that.

Q I guess you better had. A I practically did not. 898

Q I guess you did not. Now, is every statement you made——

Mr. Weinberger: Wait a minute.

Mr. Bowman: Let me finish.

Mr. Weinberger: I will stop you.

Mr. Bowman: You won't stop me.

Q I ask you if every other statement you made on the witness stand is as truthful as that last one? 899

Mr. Platt: I object to that question.

Mr. Weinberger: I object.

(Argument between counsel and the Special Master).

The Special Master: All right. Let us go on.

900 *John Paul Gibson, recalled, cross.*

*By Mr. Bowman.*

Q And do you still say now that there weren't three carpenters there the week of March 12th?

A I wouldn't say, because I don't know.

Q Now, do you know any more about any of the other weeks as to how many carpenters were there than you now admit you do for the week of March  
901 12th?

Mr. Weinberger: I object to the question unless the witness is confronted with the specific week. This is too broad and general for the witness to answer.

The Special Master: I don't think so.

The Witness: What was the last question?

(The last question was read by the stenographer)

902 The Witness: I will say——

Q Answer the question.

Mr. Weinberger: Let him answer.

The Witness: I am referring to the other weeks. I know that during this—from April 6th on, I believe in there, where Mr. Baer helped me out a couple of weeks, but from about the 15th of April until the end of the job, I am pretty sure there were no other carpenters but my two men.  
903

Q Why do you call them your two men? Didn't Mr. Seaman hire them? A Well, but——

Q Didn't Mr. Seaman hire them? A I believe he did.

Q And don't you know that you were using them some of the time on the apartment work and he would use them other periods of time on the gen-

*John Paul Gibson, recalled, cross.*

904

eral work in connection with the basement and the garage and on the other parts of the building other than the rooms? A Whatever time they put in for me they were paid, and I am sure they didn't do any work because I wouldn't let them.

Q You wouldn't let them? A While they were working for me.

Q I understand that, but when they weren't working for you, you had no control over them? 905

A No.

Q Don't you know, as a matter fact, when they weren't working for you, in fact, they were working for Seaman on other parts of this building? A That I don't know.

Q Well, you knew when you went there March 8th that there was lots of other carpenter work to be done other than inside the apartments, didn't you? A Yes.

Q And you knew that the work was done before October 1st, didn't you? A Whatever I did was done. 906

Q I didn't ask you that.

(The last question was read by the stenographer.)

Q I am talking about other work outside of your work. We are not interested in your work now; I am interested in the other work. A For instance? 907

Q All right, for instance, the storerooms in the basement: you never had anything to do with that, did you? A I wouldn't say that I didn't.

Q Well, that is carpenter work, isn't it? A Yes.

Q You didn't pay the men for that, did you? A I don't know.

Mr. Platt: What week is that payment?

Mr. Bowman: It happens to be March 5th.

908 *John Paul Gibson, recalled, cross.*

Mr. Weinberger: Well, he could have had that.

Q How about the front and vestibule door? No carpenters did anything on that under your directions, did they? A I believe they did. Saddles were put in.

Q Under your direction? A Yes.

909 Q What did you have to do with the front doors when you told us not once but a dozen times here that all you were attending to was the apartments? A I had charge of the full building and I took care of it.

Q So, now you are claiming that you are the contractor and the architect on the job instead of Mr. Seaman? A I never said that.

Mr. Weinberger: I never said that.

910 Q Do you claim it was your duty to act as architect and contractor on that job? A I assisted.

Q Now, do I understand you to say that excepting for a couple of times in March or April, you paid every penny that ever was paid to Rider and Kleinhammer?

Mr. Weinberger: He didn't specify a date, Mr. Bowman.

911 A I didn't say that.

Q Well, what did you say? A I paid Rider and Kleinhammer for what carpenter work that was done in completing my apartments for me.

Q All right. And did you say then— A With the exception of two or three times when Baer helped me out when I ran short.

Q When was that? A The early part of the renting days.

*John Paul Gibson, recalled, cross.*

912

Q In other words, March or April? A Yes.

Q It would have to be either March or April: you had plenty of money in May? A Yes.

Q You never ran short in May, did you? A Well, I don't know. I ran short every month. There was hardly a month I didn't.

Q Well, then, now, do you want to change your testimony?

913

Mr. Platt: Just a moment. I object to that question. What is there for him to change? What have you brought out for him to change?

Mr. Bowman: He is quibbling. He says now it was the early part of the job that he was short of money, and I asked him was it March or April and he said yes, and then he begins to quibble and says every month.

Mr. Platt: He says in the early part of the job he was short of money. I object to that 914 question.

The Special Master: He asked him if he wants to change his testimony.

Q Do you want to change your testimony? A No.

Q Well, now, let me ask you this so that there will be no question about it: that is the only time that Baer ever paid any carpenters; as I understand it, then, Seaman at no time paid any carpenters, is that your testimony? 915

Mr. Weinberger: He never swore to that.

Mr. Bowman: Just a minute. I am asking him if that is his testimony.

The Special Master: He has a right to ask him that.

The Witness: I never said he at no time paid any carpenters because there are two re-

916 *John Paul Gibson, recalled, cross.*

ceipts there. I gave money to Seaman to pay, and he himself typewrote these particular receipts which were obtained from the carpenters for me.

Q What month was that? A I don't know. The receipts would show that.

Q Get the receipts and tell us.

917 *By Mr. Weinberger.*

Q Is this one (indicating)? A Yes. There is another one, too.

The Special Master: R-7 and R-8.

*By Mr. Bowman.*

Q Now, I show you certain checks dated March 19th, S&B-12: That is the time, as I understand  
918 it from your testimony, that you have specific recollection that you didn't have any money, so Mr. Baer took care of the carpenters? A Yes.

Mr. Weinberger: What is the date of it?

Mr. Bowman: March 19th.

The Witness: March 19th, \$23.80. There is another one, March 19th. I believe that is one of the dates.

919 *By Mr. Weinberger.*

Q For how much? A \$39.

*By Mr. Bowman.*

Q And there is another one, isn't there? A Mat Strong. Mat Strong never worked for me.

Q He was a carpenter, wasn't he? A Yes.

Q And he was working for Seaman, wasn't he?

A That I don't know.

*John Paul Gibson, recalled, cross.*

920

Q Well, what does that check show? A It shows that Mat Strong got \$33 on March 19th.

Q Don't you know these other men were carpenters on the job working for Seaman at that time? A No, I do not.

Q You don't know that? A No.

Q Although you were there all day long including Saturdays and Sundays? A Yes.

Q After March 8th? A I don't recall Mat Strong. 921

Q Well, do you deny that he was the third carpenter? A No, I wouldn't deny it, either.

Q You got these amounts paid on leases of about \$4,000 rather early, didn't you? April. A If that is the date they were rented, I don't know exactly. I don't think Leonard was early. Leonard was listed here somewhere.

Q Well, give me your best recollection, looking at this list of \$4,000; how much of that did you get in March and how much in April? A Well, here is O'Leary— 922

Q Forget O'Leary; I didn't ask you about O'Leary. O'Leary didn't pay you anything. A Yes, he did; he gave me \$400.

Q Oh, all right. So his rent was what you never collected? A Yes. He signed leases like everybody else.

Q Don't you know most of those were signed in March? A No. 923

Q How many were? A Because O'Leary didn't come through until July, and Leonard shows up in June, and Leonard was an early one. Johnson doesn't show up until September.

Q There is three that don't show? A Seven all told.

Q Seven all told? A Yes.

924 *John Paul Gibson, recalled, cross.*

Q Wait a minute. It starts up here, my dear boy: William Barclay. A Well—

Q You don't know your accounting? A I don't expect to remember it after three years. I have done lots of other things since.

Q All right. A Barclay shows up here in June, and the next one, Roberts, shows up in June. Freidberg shows up in July.

925 Q I am not interested in when he showed up. Can you give me any idea of the apartments that were occupied in May and the apartments occupied in June? Can you give me any idea how much of the paid-down money you got in March and how much you got in April? A I cannot tell you.

Q. You can't tell? A No.

926 Q Well, as I understand your testimony, then, you claim to have paid everything—all the work that was done by Rider or this other carpenter after this March occasion, is that correct?

Mr. Weinberger: He didn't swear to that; with the exception of two or three instances.

Mr. Bowman: All right, I am trying to get that.

A I gave that testimony before, and that is the way I would like to see it stand.

927 Q That is the way you would like to see it stand, and that testimony was that you paid carpenters for every bit of work that was done there excepting on one or two occasions in the early part of your work? Is that the way I understand your testimony? A No, with the exception of a few occasions in the early part.

Q What do you call the early part? A March and April.

*John Paul Gibson, recalled, cross.*

928

Q All right. Now, that is your testimony, is it? A Yes.

Q Did you ever give him \$150 to pay out in the middle of May? A Pay who?

Q Give Mr. Baer to pay out for carpenters? A I gave him my check for \$350 there at one time.

Q It wasn't \$350; it was \$325? A Yes.

The Special Master: Your account is right 929  
in front of you.

The Witness: I saw it here a minute ago.  
I gave \$350, but the account only shows \$325  
deposit.

Q All right. When was that given to him? A  
According to here, it was Mrs. Bertha H. Brown's  
check for \$350 which I received the morning that  
Mr. Baer was there, and he said he had to have  
some money to get some floor varnish or whatever  
items he mentioned at that time; so, I gave him 930  
\$350 to get it with.

Q We have it in evidence the checks covering  
pretty near \$325 of that, and none of these checks  
paid for floor varnish, did they? A I don't know  
what they paid for.

Q You don't know what they paid for? A I  
never saw the checks.

Q How do you account for that check of May  
13th to William J. Rider for \$150, S&B Exhibit 931  
13, if you say you always paid the carpenters?

Mr. Weinberger: Except on a few occa-  
sions.

A This might be, as I have said, except on the  
few occasions.

Q Well, if it was an occasion when you didn't  
have the money, why didn't you pay Baer back that

932 *John Paul Gibson, recalled, cross.*

money out of the rents? A I don't know, maybe I did; I don't know.

Q Maybe you did? Show it to me in your accounting where you ever paid one penny to Baer outside of that \$350. A Well, I can't show it to you because I don't see anything there, but I do recall now that this thing came up. It was quite possible when I got all through accounting I was something like \$325 short, and I didn't know where I had lost it because I was pretty accurate. I had to put in that much out of my pocket to make up the balance. It might have been possible I might have given the money for what I put in there in the early stage.

933

Q Well, it isn't the early stage; it is in May. You said the early stage was March and April. A That is early.

Q You call that early now. Do you want to change your testimony? A That is only thirteen days later.

934

Q Did you ever pay him back the three checks that are shown by that March 19th money? A I cannot testify that I am sure of any that I ever paid him back.

Q Well, if, as you say, the only reason why he paid this was because you were short of money—  
A Yes.

Q (continuing) —why didn't you pay him back when you got the money, because you knew he paid that? A Yes.

935

Q Why didn't you pay that? A I don't know; I might have.

Q Well, you paid by checks, didn't you? A Checks and cash.

Q Well, did you ever give any cash to Mr. Baer on this matter? A I don't recall whether I did.

*John Paul Gibson, recalled, cross.*

936

Q You certainly wouldn't give him items that total pretty near \$300 or \$200? A I don't know just exactly how that was.

Q There was another check, May 20th, to William J. Rider for \$226. Tell us how you account for that, if you say you always paid Rider? A I am not accounting for it. I don't know a thing to say.

Q You don't know a thing to say? And you don't know whether Rider and these other carpenters were working for Seaman in other parts of the building that you didn't have anything to do with, do you? A On my time? 937

Q I am not interested about your time. I am asking you a question. A No.

Q You really don't know, do you? A No.

Q That is all I want. Now, have you told us why you continued to pay out rental moneys that you had collected after October 1st and after you knew under date of October 7th you were ordered to account? A I don't know. 938

Q You don't know? A No.

Q So, then, nobody advised you that you were no longer in the employ of the Passaic Arms until at least after November 2nd? A I wouldn't say after November 2nd; it must have been within these dates, because I had quit.

Q You paid one bill on November 2nd, didn't you? A That very likely was the last thing I did. 939

Q Well, all right. Did you pay a bill after you knew that you were ordered to account and that you had no further connection with it?

Mr. Weinberger: What is the date of the check?

Mr. Bowman: November 2nd.

940 *John Paul Gibson, recalled, cross.*

A I closed out the outstanding bills at that date. I closed out my account.

Q Why didn't you pay out all of these other bills that are shown on this March 21st, 1928, list of yours? A Well, I paid \$500 on this bill.

Q Referring to what? A Brisk damp-proofing, and Slass Ostuw was paid on account, and I believe William O'Brien—maybe he was; Joe Kovalycsik, Manhattan Rubber was straightened out; 941 William Rasin had been paid something on account; Orange Screen Company received money there from me on account, and so did the Arlington Shade; they all received money.

Q Why did you make this list up as of March 21st, 1928, as the unpaid account? A Because they were unpaid; they weren't paid in full. There was money due them.

Q You notice the date? In 1928? A I didn't 942 have anything to do with the filling in 1928.

Q Whose handwriting is this (indicating)? A Mine.

Q That is your handwriting and the date? A Yes.

Mr. Bowman: I offer it in evidence.

The Witness: Wait a minute. I want to know about this thing. I was out in October, 1927. At some time or other this list was made 943 of unpaid bills.

*By the Special Master.*

Q What about the date? A I don't know about the date.

*By Mr. Bowman.*

Q It is your handwriting, isn't it? A Yes.

Mr. Bowman: Allright, I offer it in evidence.

*John Paul Gibson, recalled, cross.*

944

(The paper referred to was received in evidence and marked S&B-1, March 13, 1930.)

Mr. Bowman: I asked him don't you know whether they were unpaid or not, and he said he doesn't remember.

The Witness: I don't remember now. That is right (indicating) that is unpaid, Manhattan Rubber Manufacturing Company; that is unpaid, and the rest is unpaid. 945

*By Mr. Bowman.*

Q You just told us a minute ago it was paid.

A I said I paid people by that name in my list.

Q Well, I know that. A Well I had forgotten.

Q Have you forgotten lots of other things?—A O'Brien: sure that is unpaid, Gold \$85; that is unpaid. Apparently somebody asked me for it at a later date and I gave it to them. 946

Q And you made an affidavit that these were unpaid and Weinberger and Weinberger made a motion that the Court consider it as preferential claims, didn't they? A I don't know anything about that.

Q You don't know anything about that? A No.

Q Well, you made an affidavit for them? A That they were unpaid? 947

Q Yes, and that they should be paid as preferred claims. A I don't know anything about how they should be paid, but I asked that they should be paid because they were outstanding.

Q You asked that they should be paid as preferred claims?

Mr. Weinberger: What does he know about what "preferred" is?

948 *John Paul Gibson, recalled, cross.*

A I insisted that they be paid as a continuation of my work because these bills were still outstanding.

Q But, as a matter of fact, every one of these bills was a bill that became a debt through the work of Mr. Seaman, wasn't it? A And mine.

Q Mr. Seaman was the man who was ordering the materials; you were merely under him, wasn't  
949 that true? A I was ordering it, too.

Q All right. Did you order the damp-proofing?  
A No; Mr. Seaman ordered that.

Q And don't you know that there was a contract entered into for that? A Yes.

Q And yet you put that on your list? A Mr. Seaman authorized me to pay \$500 to the Damp-Proofing, which I did.

Q I say, yet you put that on your list just as you did everything else that you knew about at that  
950 time, is that correct? A Yes.

Q Do I understand that you kept these few carpenters busy most of the time from March 8th to October? A I kept—— yes, I paid them for the time that they put in for me and in many instances there the time was specified how many hours a day they put in.

Q You haven't answered the question.

*By the Special Master.*

951 Q Did you keep these carpenters busy most of the time during these two dates? A Yes.

*By Mr. Bowman.*

Q Your answer is "yes," is it? A I kept them busy—— well, I don't want to answer that.

*By Mr. Weinberger.*

Q Can you tell by your record? A I kept them busy for the time that I paid them.

*John Paul Gibson, recalled, cross.*

952

*By Mr. Bowman.*

Q Well, let me ask you this: Do you know of any other job that Rider worked on other than this job between March 8th and October 1st, 1927? A I don't know.

Q Well, don't you know, as a matter of fact, that he was there all that time working on that job? A Yes.

953

Q Now, Kleinhammer was practically the same, wasn't he? A Yes.

Q All right, Now, I call your attention to the fact that during the month of July you never paid them a penny. Somebody must have paid them for their work during July? A I don't know.

Q Well, they didn't work for nothing, did they? A Well, I didn't have them in July. I might have paid them at a later date.

Q All right. How much did Mr. Kleinhammer get from you for a day's work? A I don't remember. The records are there—what he got.

954

Q Find out what he got.

Mr. Weinberger: 85 cents an hour.

Q Was he paid by the hour? A Everybody was paid by the hour.

Q Well, then, was it 85 cents whether he worked one hour or twenty hours?

955

Mr. Weinberger: Rider got paid \$1.40 an hour.

Mr. Bowman: Let the witness tell it.

A Now, what do you want?

Q First, give us the rates that these two men were paid? A Rider was getting 1.50 an hour; Kleinhammer 85 cents an hour.

Q Now, that applied to how many hours a day?

956 *John Paul Gibson, recalled, cross.*

A For eight hours. Some places here it was 9½. Very likely they worked 9½, but I guess they did get double time or time and a half for over-time.

Q Double time for overtime, don't you recall?

A I believe that is so. They had to be paid more for overtime, but I had it figured by hours.

Q What did you say Rider got? A \$1.40.

957 Q If you made any change in their pay, give us the times and what the rates of pay were for these two men. Don't you know as a matter of fact that they were working for Mr. Seaman in other parts of the building after they finished your work and sometimes before they started your work on Saturdays and Sundays? When you weren't doing anything they were working for Seaman. Don't you know that? A I don't know positively, but they might have.

958 Q You only paid \$50 to carpenters in May. Now, you know the carpenters work in May was more than \$50.

Mr. Weinberger: I object to that unless there is proof of that.

Mr. Bowman: Here it is in his account. I am not talking in the air.

959 Q Look at your own account. How much did you pay carpenters in May? A \$50.

Q You know there was more than \$50 worth of carpenter work done during the month of May, don't you? A I don't know.

Q You don't know? A Well, then, how much—

*John Paul Gibson, recalled, cross.*

960

*By Mr. Weinberger.*

Q How much for March and April?

Mr. Bowman: He hasn't got any for March.

A I haven't any for March.

*By Mr. Bowman.*

Q If Mr. Kleinhammer worked every day during June and Mr. Ridet worked every day during June, how much would they make? 961

Mr. Weinberger: That is objected to. That is not proper cross-examination.

The Special Master: Mr. Bowman, I don't want to restrict you, but I don't think it is proper cross-examination.

Mr. Bowman: All right.

The Special Master: I can see that this man didn't pay these two men for every day for all that period. It is perfectly plain. 962

*By Mr. Bowman.*

Q Did you pay a penny to either of these carpenters during the entire month of September? Look at your account. Show us anything that is not in the account right now. A There is nothing in the account for September.

Q What?

The Special Master: There is nothing in the account for September. 963

Mr. Bowman: All right. That is all.

Mr. Weinberger: I would like to have Mr. Kleinhammer's bill copied in the record.

The Special Master: The bill for carpenter work on Passaic Arms of John Kleinhammer? That is a June and July bill.

Mr. Weinberger: Yes. It was offered as

964 *John Paul Gibson, recalled, re-direct.*

an exhibit but it shows the man was working and charged daily during June and July.

*Re-direct examination* By Mr. Weinberger:

Q Show me the bills you paid Mr. Kleinhammer for June and July where it is entered in your account? A October 1st, John Kleinhammer, \$216.81.

965

Mr. Weinberger: He refers to his account and exhibits an item of October 1st paid to John Kleinhammer, \$216.81 and produces a receipt signed by John Kleinhammer for the work done.

*By Mr. Weinberger.*

Q Have you got any bills or any entries here to show me altogether how much money you paid Mr. Kleinhammer right from the beginning of the job? A No, I haven't.

966

Q Didn't you mark it under the name Kleinhammer in your record? A Yes, but I haven't got it totalled.

Q Read each item as you paid him. Carpenters, April 8th, \$84.60——

Mr. Bowman: I object to his reading all that. I picked out certain months; I never touched April.

967

(Argument.)

*By Mr. Bowman.*

Q Will you tell me why didn't you pay Kleinhammer weekly? A No reason for it; most likely it was that I didn't have the money.

Q You didn't have the money in June and July? A No. I spent it as it came in.

*James J. Murner, direct.*

968

Q This man Kleinhammer needed his money to live on, didn't he? A Apparently he didn't.

Q Apparently he didn't? A Because he waited.

Q And you want to tell us that he waited from June 27th until—what is the date you say you paid this? A October 2nd.

Q (Continuing) —until October 2nd to pay this carpenter for work done in June and July? A 969  
Yes.

Q And he did that for you? A Yes.

Q All right. Are you sure you didn't pay him weekly and then get a receipt for this from him so if he was paid double— A I am sure that I didn't do things that way.

Q It is your policy, to keep carpenters out of their money for three or four months when you have lots of money in your possession? A No.

970

Mr. Bowman: All right, that is all.

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JAMES J. MURNER, called as a witness, being duly sworn, testified as follows:

*Direct Examination* by Mr. Platt.

Q Mr. Murner, were you present at a conversation in the office or in chambers of Vice-Chancellor Lewis on March 14, 1927, at which there were also present Mr. Seaman and his attorney, Mr. Foulds? A I cannot remember that date. 971

Q Do you remember having been present in the Vice-Chancellor's office or his chambers—

The Special Master: Within a few days of the appointment.

972 *James J. Murner, direct.*

Q Within a few days of your appointment as custodial receiver? A Yes. I recall walking into the Chancery Chambers one morning and Mr. Foulds and Mr. Seaman, I think, were talking with the Vice-Chancellor, and I didn't go over to where they were talking until they had been engaged in conversation for some time and the Vice-Chancellor beckoned me there and he did say to me, if my memory serves me right, "What is there to ruining the doors on the Passaic Arms by nailing a padlock upon it?" He said, "this man complained that the property is being destroyed," as I remember it, and I recall having said to the Vice-Chancellor, "The only thing I know about that is I went to the Passaic Arms on the Saturday following my appointment and I was met by Mr. Seaman and Mr. Seaman asked me at that time  
973 by what authority I had driven spikes into the front door on the apartment and had posted a notice up there." I told the Vice-Chancellor that he said to me—that is, Mr. Seaman had said to me that on the day following, which would have been a Sunday, he had appointments with prospective customers for the apartment, and he didn't think it was a proper thing to post that sign—that notice, rather, or to have put a padlock on the front door, and that he didn't give a damn  
974 for the Court or anybody else, and he was going to take the lock off and was going to tear the notice down, and I recall having told the Vice-Chancellor that I stated to Mr. Seaman that so far as the lock was concerned, I had no knowledge of its having been placed there other than what was told to me by a young man from Weinberger & Weinberger's office to the effect that he had placed the lock upon there and up until that time  
975

*James J. Murner, direct.*

976

I hadn't seen it, but I did further state to him that I told Mr. Seaman that the notice was a court order and that it was my opinion that he should not remove the notice. I do recall having said that I saw no necessity for having the building padlocked, as it were, at that time and that if he were to take down that notice, he would subject himself to a contempt of court, and I told the Vice-Chancellor further that he said, "Court or no court," he was going to take it down, that "these damned crooks are not going to get this building," and I said to Mr. Seaman, "You may call some one else what you will other than the Court or myself, but if it is a personal challenge either to what the Court has done or what I have done, I will take that challenge, Mr. Seaman, and I will knock you right on your back." I distinctly recall that.

977

*By Mr. Bowman.*

978

Q You said this in front of the Vice-Chancellor? A Yes, up in the Chancery Chambers. Are you examining me now? And the Vice-Chancellor then dismissed us, as I recall it, and we all walked out together, and Mr. Foulds, if my memory serves me right, told me on the way out they were going to get in touch with Weinberger & Weinberger, and see if they couldn't straighten this whole matter out.

979

*By Mr. Platt.*

Q Was there anything said in your presence by the Vice-Chancellor with reference to Mr. Seaman and Mr. Baer completing the building? A No.

Q Was there any direction given to you by the Vice-Chancellor during this conversation at that

980 *James J. Murner, cross.*

time that you were to permit—or directing you to permit—the completion of the building by Seaman and Baer? A No.

Q Was there anything else said by the Vice-Chancellor to you or by you to the Vice-Chancellor during that particular time? A No.

Q Other than what you have recited? A Except the conversation at the building on Saturday.

981 Q Was there any other conversation when you were in the presence of the Vice-Chancellor and Mr. Seaman and Mr. Foulds, if you can remember? A That I don't remember.

Q Do you remember any conversation in the presence of Mr. Foulds and Mr. Seaman and yourself and the Vice-Chancellor at any time with reference to the completion of the building by Seaman and Baer or either one of them? A No.

982 Q Do you remember that any such conversation ever took place? A No. I have already testified that no conversation took place within my hearing where anything was said with reference to the completion of the building by Seaman and Baer.

Mr. Platt: That is all.

The Witness: I did say that they were engaged in conversation for some time while I stood back there before I was beckoned up.

Mr. Platt: That is all.

983

*Cross-examination* by Mr. Bowman.

Q You knew on March 10th, or within a day after that, that you were custodial receiver of Pas-saic Arms, didn't you? A Is that the date of the appointment?

Q That is the original one, yes. A Yes.

The Special Master: March 10th, 1927.

*James J. Murner, cross.*

984

Q Yes, March 10th, 1927. What did you do after your appointment respecting getting the building completed personally? A Up to what time to you mean?

Q I just asked a general question. What did you do personally respecting the completing of that building after March 10, 1927, if anything? A Had several of the apartments redecorated.

Q I will change the question and put it between March 10, 1927, and October 1, 1927? A Between March 10, 1927, and October 1, 1927. 985

*By Mr. Platt.*

Q While you were custodial receiver.

*By Mr. Bowman.*

Q While you were receiver. A With reference to completing the building?

Q Yes. A Nothing

986

Q Well, did you consider that you were carrying out your duties of custodial receiver by doing nothing? A I didn't say that I did nothing.

Q All right; nothing respecting the completion of the building. A I did.

Q Why didn't you do something respecting the completion of the building? A I had no authority.

Q Did you ask for any authority? A That I am not sure of.

987

Q You were perfectly willing to have Seaman and Baer go ahead and complete the building?

A Just a minute; excuse me; I am sorry I interrupted you. You asked me—

(Last question read).

The Witness: I answered that question with reference to the period of March 10th to October 1st.

988 *James J. Murner, cross.*

Q October 7th. A Well, whatever date you say, but there were several times after that that I made many efforts.

Q You were perfectly satisfied to have Seaman and Baer go ahead and complete the building at their expense, weren't you? A I was not. I didn't feel it was a matter of my concern.

989 Q Why didn't you think it was any concern of yours although you were custodial receiver? A I didn't know I had any authority to complete the building or order anybody or authorize or acquiesce in anybody's completing it.

Q You knew there was an injunction in the order appointing you custodial receiver which prevented the Passaic Arms, Inc. as a corporation from doing anything, didn't you? A I did.

990 Q Why did you let the Passaic Arms, Inc., or any of the officers or directors do anything on that building after March 10, 1927? A I didn't know they had done anything.

Q So, in other words, you purposely stayed away and left that building by itself? A I didn't say I did.

Q What did you do? A I visited the building on several occasions.

991 Q All right. When? A Subsequent; with reference to the period from March 10 to October 7th?

Q Yes. That is what we are talking about. A Several times.

Q When? A The day following—the Saturday following my appointment is the first I recall having been there, and there wasn't a week between then and October that I didn't go down there at least two or three times and just look the place over.

*James J. Murner, cross.*

992

Q And you found that the building was being completed, didn't you, on those dates? A There was nothing that was being done that I could observe that was being done to complete the building during those visits.

Q When were those visits? A Between March 10th and October——

Q I ask you for better specification of the dates than that? A I have given it to you. Weekly at least two or three times every week during that period. 993

Q Did you ever see Mr. Gibson on he job? A I did not.

Q You heard the testimony of Mr. Gibson this morning about his being there all times practically every day during this period from March 10th to October 1st. You can state of your own personal knowledge that you never saw him there? A I 994 didn't hear him testify, in the first place, this morning, and when I would visit the building it would be in the evening or Saturday afternoon and on some Sundays I recall, but during the times I was there in the evenings or on Saturday afternoon or on Sunday I never recall having met Mr. Gibson at the building.

Q Do you recall seeing Mr. Seaman at the building? A Many times.

Q He was always on the job, wasn't he? A I 995 don't know what you mean by "always on the job." I know I met with much difficulty in finding him on several of my visits.

Q But you finally did, didn't you? A Not at all times; most of the time, no.

Q Most of the time no? A No. I will complete my answer: I would knock on the door of the apartment and couldn't get any response and

996 *James J. Murner, cross.*

had to get the information from the neighbors that he wouldn't answer the door.

Q You say this was between March 10th and October 1st that you knocked on his apartment door? A Yes.

Q Do I understand you to say that on each and every one of these visits that you saw no change in the building from March 10th to October 1st? A  
997 The only thing I observed going on was some man doing the damp-proofing on the building.

Q So, it is your testimony now that as a result of your visits the only work that was done on that apartment between March 10th and October 1st was some damp-proofing? A I didn't say that.

Mr. Weinberger: He didn't say that.

Q All right. I ask you again. I ask you now  
998 to tell us everything that you recall that was done to change that building between the condition as of March 10, 1927, and October 7, 1927, when you became the receiver? A The only thing I know of and that I recall was the man doing the damp-proofing, and that information, if I recall it correctly, I got from someone when I asked him what the scaffolding was for; he told me they were doing damp-proofing.

Q Did you visit the apartments around March  
999 10th, or within the next month? A Yes.

Q Were they habitable at that time in March? A In March? I don't think so.

Q Well, then, you do know that by October, according to Mr. Gibson's report, which was filed with you, that every one of the twenty-seven apartments were rented? A I never knew they were, and, as a matter of fact, I know up to this very day they have never been fully rented.

*James J. Murner, cross.*

1000

Q Well, were they in condition to be rented when you took it over October 1st, 1927? A That is a conclusion as to whether or not they were in such condition, and my opinion—if you want my opinion as to whether or not they were,—I would say yes.

Q You would say yes? A Yes.

Q So, then, whatever work was done towards completing the apartment, you considered it none of your business who was doing it or who was paying the people? A I didn't know it had been done. 1001

Q So, you still contend that there wasn't any work done between March 10th and October 1st? A I haven't as yet said that, and I will not say it now.

Q What do you say respecting what was done? A I don't understand that question. 1002

Mr. Platt: That question has been asked two or three times before. It is in the record what he said was done.

Q All right. Didn't you consider it important as custodial receiver to get that building completed and get the apartments rented as speedily as possible? A I didn't feel at that time that I had authority to complete it.

Q Who told you you didn't have authority? A With reference to the—— 1003

Q I asked you the question. A I have only answered part of the question.

Mr. Bowman: I object to any more than has been answered.

The Witness: He has incorporated two propositions in the question.

(Last question read.)

1004 *James J. Murner, cross.*

The Special Master: The question was, did you consider it important? That was the question and you said you didn't think you had any authority.

The Witness: With reference to the completion of the building.

(Last question re-read.)

1005 *By the Special Master.*

Q Didn't you consider it important as custodial receiver to get the building completed? Important to get it completed and get it rented? A There was nothing I had observed that would have necessitated the completion to any great extent in order to make the building habitable, and with reference to getting it rented, John Paul Gibson called upon me the day following my appointment as custodial receiver and asked me did it mean that he was out, and I said that he had several prospective purchasers and tenants for the building that he desired to see and that he had appointments to meet and wanted to know, if he was successful in renting the premises, whether he would be paid his commission. I said, "You may get any tenant you can, and I will petition the Court to pay you a proper fee for any tenants you get and for any rents that you collect."

1006  
1007 *By Mr. Bowman.*

Q So, then, it was your intention as custodial receiver that if anybody paid any moneys out to put those apartments in condition, and if they got renters for them, that you would see that they were compensated or reimbursed? A I didn't say that.

*James J. Murner, cross.*

1008

Q I ask you whether it was your intention; I didn't ask you—— A No.

Q It wasn't your intention? A No.

Q All you intended to do, and was the extent of any authority that you ever have given as custodial receiver, was to tell Mr. Gibson that if he rented any of the apartments, you could see that he got his five per cent. compensation? A I didn't say that; I said that I would petition the Court for a proper fee. 1009

Q And have you ever petitioned the Court to pay him the proper fee? A He had already deducted it.

Q I ask you again—— A It wasn't necessary.

Q Did you? A No, because it wasn't necessary.

*By the Special Master.*

Q You didn't do it? A No.

1010

*By Mr. Bowman.*

Q In other words, you think when a man pays himself out of the rent, that that is sufficient authority for carrying out what you said you would do for him, is that correct? A No.

Mr. Weinberger: That is objected to.

Mr. Bowman: He answered it.

The Special Master: He said "No." 1011

Q Have you ever petitioned the Court to pay him anything? A No. I petitioned the Court to make him pay me.

Q And did you ever carry it through and get an order on it? A The attorneys did, or I directed them to.

Q You were talking about the order of October

1012 *James J. Murner, cross.*

1st appointing you permanent receiver? A No; in order for him to account to me for all the moneys he had collected and the commissions he had taken.

Q Produce that order.

The Special Master: Is that the order of October 7th?

Mr. Weinberger: Yes.

1013 (Mr. Weinberger then read the order referred to.)

*By Mr. Bowman.*

Q Do you know of any other or further order ever requiring him to account other than the one just read of October 7th, 1927? A I know I didn't get the accounting as soon as I thought I should have it, and I know I went after my attorneys.

1014 Q And you know, as a matter of fact, that you left John Paul Gibson in charge just as he had been previously, collecting rent and paying out moneys for nearly two months after you were appointed permanent receiver? It shows in his account. A I don't know what he had been doing previous to my appointment as custodial receiver.

Q Before your appointment as permanent receiver? A No.

1015 Q That didn't interest you at all? A No. I did talk with him about renting the apartment.

Q All right. Did you give him any authority to spend any of the rent for completing the apartment? A No, sir.

Q Have you asked him to turn over to you the moneys he collected as rent? A Yes.

Q Did you get a court order to have him turn it over? A I understand that is so, I requested it.

Q As I understand your position both as cus-

*James J. Murner, cross.*

1016

todial receiver and as permanent receiver, you couldn't expect to make Mr. Gibson pay back to any moneys that he paid for materials or labor between March 10, 1927, and October 1st because you only authorized him to rent the apartment and only you told him that all you would do would be that you would petition the Court that he be paid a fee for his real estate work, is that correct?

A That is true.

1017

Q All right. That order was entered October 7th, 1927, and it is now March, 1930, nearly two and a half years. Have you petitioned the Court for any order to compel Mr. Gibson to pay back the sum of ten or twelve thousand that he collected as rent between March 10th and October 1st, and which you say now on the stand he wrongfully and improperly spent? A Yes, I have asked Weinberger and Weinberger to have it determined by the Court.

1018

Q Why didn't you get a decision? A I am not the Court.

Q Oh, you are not the Court. A I didn't act as my own attorney.

Q All right. Did you know that Mr. Gibson was working under contract with the Passaic Arms? A When?

Q At any time after you were appointed custodial receiver? A When he made the final account for me, I observed that several payments had been made, and I sent for him and I told him I was afraid he had himself in a jam.

1019

Q That is not responsive.

*By the Special Master.*

Q Did you know he was under contract with the Passaic Arms? A No. I still don't know that.

1020 *James J. Murner, cross.*

*By Mr. Bowman.*

Q Oh, you still don't know that? How do you suppose he got there? A I don't suppose anything.

Q Well, then, as an attorney why didn't you ask him? A It wasn't my business what he and the Passaic Arms had done.

1021 Q As custodial receiver you weren't interested in the relations between the Passaic Arms, for which you were appointed custodial receiver, and this real estate man? A I was interested in my relations with him.

Q Weren't you interested in his relations with the company of which you were receiver? A Yes, as far as it affected me.

Q Didn't you ever ask him if he had any contract? A No; it wasn't necessary.

1022 Br. Bowman: I move to strike out "it wasn't necessary."

The Special Master: Yes.

Q Anyway, you didn't do it, although you were receiver? A Didn't do what?

Q You didn't ask him if he had any contract with the Passaic Arms? A I did not.

Q Do you know Mr. Foulds, an attorney at law? A Yes, I know who he is.

1023 Q He has the reputation as an honest attorney at this bar.

Mr. Weinberger: That is a highly improper question.

Mr. Platt: We will admit all that.

The Special Master: He has.

The Witness: I don't know his reputation at all. I assume it is O. K.

*James J. Murner, cross.*

1024

*By Mr. Bowman.*

Q As I understand it, at no time while you were the receiver with Mr. Foulds or Mr. Seaman, was anything said about completing the building? A That is true.

Mr. Bowman: That is all.

*By Mr. Weinberger.*

1025

Q You were informed, were you not, that there were negotiations from the day of your appointment as custodial receiver with Passaic Arms, Inc., and other attorneys that the matter was going to be settled, and that is why this matter was continued until October? A It was my understanding that there were negotiations to settle the entire affair.

Q And the negotiation settlement fell through and finally there was a receiver appointed in October, is that true? A I know the receiver was appointed, and apparently, the negotiations were not concluded to settle it. 1026

Mr. Weinberger: I think that is all.

Mr. Murner: Mr. Corbin, I would like to say something here for the purpose of the record, and I don't think Mr. Bowman is familiar with it because of the question he asked with reference to the petition made to the Court: this bill of O'Brien that was incorporated in one of these bills, and the bill of Rasin: they made application to the Vice-Chancellor for the payment of these bills and the Vice-Chancellor in court asked me had I authorized their incurrence, and I said no, and he refused to sign the order to pay them. Rasin came in and the Vice-Chancellor asked 1027

1028 *James J. Murner, cross.*

me, whenever one of these bills was presented, "Did you authorize the incurrence of that bill?" and I said, "No," and he then refused to sign any order. So, apparently, the Vice-Chancellor couldn't have authorized them to go ahead and do that. As a matter of fact, Mr. Bowman, I said we had used the coal of O'Brien and I said the man ought to be paid, and the Vice-Chancellor said, "Did you order it?" and I said, "No." So he refused to sign for it.

1029

The Special Master: Mr. Murner, an affidavit was made by Preston B. Seaman, dated April 2, 1928, setting forth various amounts of money expended toward the completion of the building known as Passaic Arms, which work, the affidavit states, was done on instructions from Vice-Chancellor Lewis in open court in Chancery Chambers in Paterson. These amounts, the affidavit states, are due to the Arlington Shade Company, Van Dyk Furniture Company, Abendroth Bros., Brisk Waterproofing Company, Richardson-Boynton, Orange Screen Company, Dyer Kane Company, Joseph Kovalycesik and Crane & Company, Manhattan Rubber Company. Was any application ever made to the Vice-Chancellor by you or on your behalf for the payment of these amounts?

1030

1031

Mr. Murner: Abendroth Bros. got a rule to show cause, I believe, compelling me to show cause why I shouldn't pay the bill. I refused to pay the bill; then they produced in court that it was a conditional bill of sale and told the Court that they would take their ranges out of the apartment under the conditional bill of sale unless the bill was paid

*James J. Murner, cross.*

1032

and they had a court order directing me to pay it. The Van Dyk Furniture Company, I think, was for Hoosier Cabinets. The same situation prevailed there; they produced in court a conditional bill of sale, and they got an order to pay the amount or they would remove their chattels from the building.

The Special Master: Was there any application made with respect to the other item? 1033

Mr. Murner: I refused to pay the others.

The Special Master: Such as Dyer Kane Company, \$5,408; Brisk Waterproofing Company, \$2,500, and the other smaller items.

Mr. Murner: Brisk and their attorneys called on me several times, and I think they were in court and I refused to pay because I didn't incur it or know anything about it. I paid no claim except as was on a court order for anything that had been incurred prior to my incurring expenses in the building, and then in addition to that, my best recollection is that Abendroth Bros. were paid upon a court order because of having a conditional bill of sale, and the Van Dyk Furniture Company was paid because of its having a conditional bill of sale and the others were on court orders. I made an application to pay nobody at any time. 1034

Mr. Weinberger: My recollection of this application for an order why certain creditors should not be paid enumerated in Mr. Seaman's affidavit of April 2nd, 1928, and Mr. Gibson's affidavit of the 10th of April, 1928, is to the effect that the creditors were dunning this Seaman and Gibson and the receiver. Mr. Murner refused to pay them because they were 1035

1036 *James J. Murner, cross.*

incurred without his authority or without authority of the Court, and in order to protect himself as receiver, my recollection is that this petition was drawn and served on Mr. Alling for the Court to approve of it. Based on the affidavits filed by Seaman and Gibson, my recollection is that Mr. Alling wanted these bills paid, but that the Vice-Chancellor after hearing what took place from the receiver refused to approve and direct the order be made at that time or any subsequent time, with the exception of a claim filed for the Van Dyk Furniture Company, which was a conditional sales contract and also some other replevin action or conditional sales action wherein the Receiver had no title, and when the orders were made, Mr. Murner was directed by the Court to pay it. Nothing else was paid other than on a court order.

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1038

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Schedule of Exhibits introduced at hearings before Special Master, ARTHUR S. CORBIN, on February 20, 1930, February 27, 1930, and March 13, 1930:

**Exhibit S & B-1.**

(Page 52 of State of Case.)

Minutes of meeting of the Board of Directors of PASSAIC ARMS, INC., held at the office of the Company in the City of Passaic, New Jersey on Monday, February 21st 1927 at two o'clock in the afternoon. 10

Preston B. Seaman, Philip Baer and Julia Baer being present.

Mr. Seaman stated that on February 18th 1927 he had caused to be served upon Mr. Clow, President of the General Industrial Engineering Company the customary three day notice to proceed with the work under the agreement or same would be considered abandoned. That the three days had elapsed and that said Percival Clow has stated in the presence of certain witnesses that his company was not in position to proceed further with the work and suggested that the PASSAIC ARMS, INC., proceed with the completion of the said work. 20

Mr. Seaman also stated that he together with Mr. Philip Baer had a conference with Mr. G. J. Fleischmann, Vice-President of the EMPIRE BOND & MORTGAGE CORPORATION and subsequently with Mr. English of THE METROPOLITAN CASUALTY INSURANCE COMPANY who underwrite the completion bond. After due discussion it was decided for what seemed to be the best interests of all concerned that PASSAIC ARMS, INC., under the direction of Preston B. Seaman, architect of the buildings proceed forthwith to complete the buildings in accordance with 30 40

the plans and specifications and the agreement as abandoned by the said contractors, THE GENERAL INDUSTRIAL ENGINEERING COMPANY.

10 Mr. Fleischmann, of THE EMPIRE BOND & MORTGAGE CORPORATION being very emphatic to state, his company would make no further money advances on account of the building and loan agreement so long as any liens remained recorded against the premises. That it would be incumbent upon PAS-  
SAIC ARMS, INC., to provide whatever moneys were necessary to complete the work, other than from any balance to become due and payable from EM-  
PIRE BOND & MORTGAGE CORPORATION to PASSAIC ARMS, INC., under the building and loan agreement.

20 Mr. Seaman further stated that he had carefully examined the buildings and found in addition to the uncompleted work much of the labor and ma-  
terials already installed to be defective to the extent that same would not properly function and that it would be necessary to remove same and sup-  
ply additional apparatus. The approximate esti-  
mate of the work and materials already installed to be not more than 65% of the original estimate of the work to be done according to the plans, speci-  
fications and agreement.

30 Mr. Seaman further stated he had arranged to purchase the necessary materials and hire mechanics to perform the labor and asked authority from the  
directors so to do.

A resolution was introduced, duly seconded and unanimously carried authorizing Mr. Seaman to use his judgment in the purchase of materials and labor to complete the buildings ready for occu-  
pancy. The necessary funds for same to be tempo-  
rarily advanced by Messrs. Seaman and Baer until sufficient money from the rents of the building be-  
came available to reimburse them.

FURTHER RESOLVED that the compensation of Mr. Seaman for such additional service be at a weekly salary of FIVE HUNDRED DOLLARS (\$500.00) per week, to be paid as previously stated, namely, as money or funds become available from the rents or other income from the building.

The above resolutions were unanimously adopted. There being no other business to come before the meeting and upon motion it stood adjourned. 10

PHILIP BAER,  
Secretary.

20

30

40

**Exhibit S & B-2.**

(Page 57 of State of Case.)

ORDER TO SHOW CAUSE AND APPOINTING CUSTODIAL  
RECEIVER.

Filed March 10, 1927.

## IN CHANCERY OF NEW JERSEY.

10

Between

LOUIS LEVY,  
Complainant,

and

PASSAIC ARMS, INC., a corporation,  
Defendant.On Bill,  
etc.Order to  
Show Cause  
and Appoint-  
ing Custodial  
Receiver, &c.

20

This matter being opened to the Court by Weinberger & Weinberger, Esqs., solicitors of complainant, and upon reading and filing the bill of the said complainant, and the affidavit thereto annexed.

30

It is, on this 10th day of March, 1927, ORDERED, that the defendant, Passaic Arms, Inc., show cause before the Chancellor, or such Vice-Chancellor as shall then be sitting on the 21st day of March, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers in the City of Paterson, N. J., why a permanent receiver should not be appointed to take over the business of the said Passaic Arms, Inc. and manage and conduct said business, having the powers vested in him as were heretofore, and are now vested in said corporation.

40

And be it further ORDERED, that in the meantime after notice of this order, that said defendant be and is hereby restrained from exercising any of its privileges or franchises, from collecting any debts, and from paying out, selling, assigning, or otherwise transferring any of its estate, monies, funds, lands, tenements, or effects, until further order of this Court.

And be it further ORDERED, that James J. Murner, 10  
of the City of Paterson, County of Passaic and  
State of New Jersey, be and is hereby appointed  
Custodial Receiver for the creditors and stockhold-  
ers of the said defendant corporation, with all of  
the powers incident thereto, and that he do and  
perform all of the duties incident thereto, until the  
further order of the Court, upon condition that the  
Receiver, before he shall enter upon his duties as  
such Receiver, shall take the oath prescribed by 20  
law and give bond to the Chancellor of the State of  
New Jersey, conditioned upon the faithful perform-  
ance of his duties, to be approved by and of the  
Special Masters of this Court in the sum of Five  
thousand dollars.

And it is further ORDERED, that a copy of this  
order, certified by the solicitors of the complainant,  
be served on Passaic Arms, Inc., and on its stock-  
holders, within three days from the date hereof, by 30  
mailing a letter to their last known addresses. Ap-  
plication may be made by any of the parties to  
amend or vacate the within order on three days'  
notice.

E. R. WALKER,  
C.

Respectfully advised,  
VIVIAN M. LEWIS,  
V. C.

**Exhibit S & B-3.**

(Page 61 of State of Case.)

Examination and report of incomplete condition of Passaic Arms Apartment as of February 18th 1927.

PRESTON B. SEAMAN  
Architect.

- 10 Copper ceiling for front porch and electric light fixture for same.
- Marble base for vestibule and bronze saddles to the exterior doors. Floor tile in vestibule not complete. (Done)
- Repair buckled oak flooring throughout the apartments. Most of the borders have been laid but much of the centres have not been finished. The sanding of the laid portion of the oak flooring has been improperly done and must be done over. The finished floors of apartments 1-C and 1-A have been ruined from the extreme heat from the boilers due to the absence of an asbestos ceiling over the boilers. The finished floors throughout to be repaired, scraped, filled, waxed and polished. Many door bumpers to be furnished and placed. (Done in part)
- 20 Cork flooring in corridors and bath rooms to be finished, repaired, sanded and lacquered. (Done in part)
- 30 Broken window lights to be replaced in the outside window. Glass in the French doors to be furnished where missing or broken. (Done)
- Metal casement windows to be adjusted so as to close tight. (Not done)
- Cracked and damaged plastering to be repaired. (Done)

None of the ceilings have been primed or painted and many of the side walls are badly stained and marred. (No ceilings done)

The doors throughout have been stained but not rubbed or finished, hardware on same is missing, such as locks, striking plates, knobs and bolts. No keys for doors. (Done)

Closets not entirely shelved and no clothes hooks have been furnished or placed. (Done)

Missing Nickle Plated flooring and ceiling plates for heating risers. (Done in part) 10

The plumbing work is not complete, many leaks in joints, flush valves to closets must be adjusted and silencers furnished. Missing six toilet seats, eight drip boards for sinks, four rain head showers, some bath curtains and nickle pins for same, nickle holds backs, chains, and porcelain escutcheons and arms to be furnished and placed. (Not all done)

Two of the bath rooms are without Medicine Cabinets. (Done) 20

Four of the bath room floors (cork) have been taken up to repair plumbing leaks. (Done)

Panel moulding on side walls not complete. (Done)

No night lights in the corridors to light stairs. (Done)

Serrel electric refrigerators have been delivered, not placed or connects ready for operation. (Several taken out) 30

No cabinets or dressers in kitchens. (Done)

Hot water system does not function and has been improperly installed. (All new—done)

Hot water storage tank, pipes and boiler breaching to be covered with asbestos. Safety valve for storage tank and asbestos ceiling over boilers to protect the floors above. (Not done).

Many of the radiators have been disconnected for plastering, decorating, etc. No radiators have been furnished for the vestibule. No bronze screen for incinerator door on first floor. (Done in part)

The paint is coming off the walls due to not being properly sized. (Done as temporary job)

No transom lights, hardware etc., for office doors. (Done)

Janitor's apartment not finished. (Done in part)

10 Store rooms in basement have been started but not finished. (Done)

Two of the water closet bowls, seats and two basins are not of the manufacture as specified. They are of an inferior grade. The gas ranges have been delivered and connected for gas service but no enameled vent pipes. The ranges are not as specified and must be changed. (Changed by order P. B. S.)

20 All the interior doors were specified to be  $1\frac{3}{4}$ " (Except closet). The doors delivered and hung are only  $1\frac{1}{8}$ " thick. Most of the doors are badly sprung and warped on account of not being thick enough. (We were to get allowance)

The tenement House Department require an additional pair of fireproof smoke doors to be located at the foot of the stairs on both sides of the building. This item is afloat from the general contract and is estimated to cost \$500. per set or \$1,000. for the two sets. (Done)

30 The roof covering is not according to the specifications, it is full of air blisters and water bubbles. Is not graded to down spouts and the water stands in deep puddles after a rain. It leaks badly in numerous places, in fact all over. (Not done)

No copper flashing as specified has been employed where the roof joins the parapet walls or smoke stacks. (Not done)

A Johns-Manville roof was specified and to carry a twenty-year guarantee of service. Upon examination a representative of Johns-Manville refused to give such a guarantee. (No guarantee)

The fire-places or chimneys above the roof are not in accordance with the plans. The incinerator and boiler flue are about ten feet lower than the plans show. (Not done)

Bulkhead doors not properly fitted or supplied with the proper hardware. (Done in part only) 10

The brick work has not been properly cleaned or pointed and lacks the waterproofing and therefore all the walls are damp in wet weather. (Not finished—commenced)

The joint in the casement window frames where built into the brick work is open, not filled with plastic cement as specified. (Done in part)

Cement platforms, walks and retaining walls at side entrance. (Done) 20

Leaders to be connected to the drain pipe to catch basin. Leader and gutter for garage and connected with catch basin. Catch basins and drain pipe for same. (Done)

Skylights on garage built of galvanized iron instead of copper as specified. The skylights are not fastened to the roof and are liable to be blown off in a wind storm. (Not satisfactory)

Rubbish to be removed from buildings and premises. (Done) 30

Tool boxes, concrete mixer, cradles, wheel-barrows, outside boiler (upright) material shed and mechanic's privy etc. the property of the contractors. (Done)

The earth from the excavations to be graded. (Done)

Walks and drives (not included in contract). (Done)

Broken side-walks and curb to be repaired.  
(Done)

Heating to be installed in garage building. (Not done)

Concrete cement floor for garage building.  
(Done)

The steel trusses of garage roof to be painted.  
(Not done)

10 Garage doors to be re-hung and hardware supplied. (Done)

Glass in garage doors, broken, to be replaced.  
(Done)

Joints in the tile roof of garage to be cemented with roof cement and made watertight. (Done in part)

Clothes posts in yard for laundry. (Done)

Gas heater and dryer in laundry. (Not done)

20 Removal of temporary fence (posts and wire) on both sides and rear of premises. (Done)

The estimated percentage of the work done as per plans, specifications and agreement, at the time of the abandonment of the building by the contractors to be about 65% of the materials to be furnished and the labor to be performed.

**Exhibit S & B-4.**

(Pages 61-62 of State of Case.)

We have it or we'll get it for you

REICHEL'S  
RELIABLE

Telephone 3157 Passaic

10

HARRY J. REICHEL  
Hardware and Radio  
Paints, Oils, Varnishes, Glass  
House Furnishings Window Shades  
Builders', Painters' and Plumbers' Supplies  
200-202 Main Avenue  
Passaic Park, N. J.

3/15/27

20

6 lbs. Nails

\$ .36

Paid  
HJR

30

40

**Exhibit S & B-5.**

(Page 73 of State of Case.)

WEEK ENDING—February 26, 1927

	Labor	196.60
	Materials	80.00
	Cromwell R. (Ins.)	300.00 Check
	Architect service	500.00
10		<hr/> 1,076.60

3 Carpenters on Store Rooms in basement  
Lumber, Wire, Hardware, Nails, etc. for same  
Cromwell Reid & Co. (Insurance Premium)

---

 WEEK ENDING—March 5, 1927

20	Labor	291.60
	Supplies	24.00
	Hot Water System	106.00
	Architect	500.00
		<hr/> 921.60

30 3 Carpenters store room in basement and carpenter  
work through building.  
Hasps and hinges for store room.  
Steam fitter and helper on hot water system.

## WEEK END. Mar. 12th, 1927

Labor	248.50	
Supplies	16.50	
Hot Water system	55.00	
Van Dyk Furniture	200.00	Check
H. L. Butler	41.34	Check
Braveman Marble Wks.	25.00	Check
Architect	500.00	
	<hr/>	10
	\$1,086.34	

3 Carpenters		
2 Laying finished floors		
1 Removing Temporary fence		
Oak flooring		
Van Dyk on account of kitchen cabinets		
H. L. Butler, Bronze saddles for outside doors		
Braveman, Marble base for vestibule.		20

## WEEK ENDING Mar. 19, 1927

Labor	195.80	
Material	33.00	
Supplies	37.00	
Hardware	66.67	Check?
Architect	500.00	
	<hr/>	30
	\$832.47	

Carpenters general throughout building repairing		
buckled floors		
Material Oak flooring		
Supplies Nails and glass for doors		
Hardware Poles and hooks for closets		
Report and vouches sent to Foulds		40

## WEEK ENDING Mar. 26, 1927

Labor	297.60
Lumber and Hardware	39.00
Architect	500.00
	<hr/>
	836.60

- 10 Carpenters shelving closets, hooks and poles  
 Laborer cleaning rubbish  
 Lumber and hardware for pantrys  
 Copy to Foulds

## WEEK ENDING April 2nd 1927

	Labor	341.20
	Materials	195.40
20	Architect	500.00
		<hr/>
		\$1,036.60

- 30 Carpenter Gen. in building  
 Masons Retaining walls, platform and walks  
 (side entrance)  
 Lumber for shelving and flooring.  
 Cement and sand for concrete  
 R. & V. to Foulds

## WEEK ENDING April 9, 1927

Labor	192.40
National Electric Co.	71.90 (Check) P.B.S.
N. Y. Locksmith	30.00
Materials	46.00
Supplies for Janitor	19.00
Architect	500.00

---

 \$859.30

10

Carpenters  
 Nat. El. Night Lights  
 Fitting keys to locks  
 Lumber and hardware glass etc.  
 Brooms, shovels, pastes etc.  
 Rep. and bills to Foulds

## WEEK ENDING April 16, 1927

Labor	192.40
Material	38.00
Kitchen Dresser	60.00
Coal for Hot Water	11.50
Richard, Boyntin & Co.	142.50 Check P.A.
Arlington Shade Co.	100.00 Check P.A.
Architect	500.00

---

 \$1,044.40

20

Carpenters Finishing apartments and Front and  
 Vestibule doors. Putting down bronze saddles.  
 Mat. Mouldings, glass, closet shelves and hardware.  
 K. D. 4 Millworked kitchen dressers.  
 R. & Boyntin New Hot Water Heater (on  
 Account)  
 Shades for windows (on Account)  
 Rep. to Foulds

30

40

## WEEK ENDING APRIL 23, 1927

Labor	192.40
Material	20.50
Mason & Helper	72.00
Architect	500.00
	<hr/>
	784.90

- 10 Carpenters Finishing apartments. Some locks not fitted and no striking plates, buckled floors, moulding panels, door bumper, etc.  
 Material Glass for French doors. Brads and sand paper. Cement and sand for foundation for heater.  
 Mason & Helper—Building foundation for heater.  
 Bills etc. to Foulds

20

## WEEK ENDING April 30th 1927

Labor	192.40
Materials	13.00
Steam fitter and helper	85.00
Legal	6.00
Archt.	500.00
	<hr/>

30

796.40

- Carpenters Finishing apartments, monthly in 1E alternation  
 Mat. Gyp. bloc and plaster  
 Steam F. & Helper New Hot water system  
 Legal (affidavits)  
 Reported to Foulds with bills

40

## WEEK ENDING May 7, 1927

Labor	192.40
Material	6.00
Lumber for cabinets	54.00
Lighting bulbs	10.00
Architect	500.00
	<hr/>
	762.40

10

Carpenters On outside doors and transoms  
 Material Hardware for same  
 Lumber Special kitchen cabinets over  
 Refrigerators  
 Electric Bulbs for lighting halls 10-W-H  
 Reported to Mr. Fould

## WEEK ENDING May 14th 1927

20

Carpenters	192.40
Supplies	25.00
Mason & Helper	136.40
Material	34.00
Steam F. & Helper	80.42
John Parker	50.00 Check
Archt.	500.00
	<hr/>
	1,018.22

30

Carpenters Fitting doors, buckled floors, etc.  
 Supplies Nails, catches, glass etc.  
 Mason & H. Gypsum bloch petition and patching  
 plaster  
 Materials Gyp. bl. and com. plaster  
 Steam F. & Helper New Hot. Water System  
 John Parkin's Janitor one-half months salary.  
 Rep. to Mr. Foulds

40

## WEEK ENDING May 21, 1927

	Labor	192.40
	Lumber & Hardware	9.32
	Cartage	7.00
	Mason & Helper	136.40
	Fidelity Union T. Co.	1161.88 (Check)
	Van Dyk	213.00 (Check)
	D. Schminn	65.00 (Check)
	Coeoran Pty. Co.	9.00 (Check)
10	Architect	500.00
		<hr/>
		2294.00

Carpenter General throughout apt.  
 Lumber & H. In connection with above  
 Express On heater  
 Mason & Helper—Gyp par. & patching  
 Fidelity Union Interest  
 Van Dyk On account  
 20 Schminn Shut metal for Kal. Doors  
 Printing Co. Rent Receipts.  
 Rep. to F.

## WEEK ENDING May 28, 1927

	Labor	192.40
	Lumber	115.00
	Hardware	18.00
	Express	2.75
30	Coal	23.00
	Public Service	13.46 Check
	Architect	500.00
		<hr/>
		864.61

Carpenters Finishing aparts. and fixing leaks in  
 roof also erecting K. dressers.  
 Lumber Kitchen Dressers and shelving.  
 Hardware For the above.  
 40 Express Delivery of screens for windows  
 Coal For heating & drying building  
 Public S. Gas & Elec.  
 Rep. to Mr. Foulds

## WEEK ENDING June 4, 1927

Labor	185.60
Hardware for Garage Door	18.00
Wire Glass for Garage Door	10.00
Mason Materials	87.00
Architect	500.00
	<hr/>
	800.60

10

Carpenter In apts. and garage  
 Hardware Hanging Garage doors  
 Wire Glass For garage doors  
 Mason Material Cement, Plaster's Par. B1.  
 Copy and Vouchers to Foulds

## WEEK ENDING June 11, 1927

Carpenter	192.40
Lumber & Hardware	18.00
Steam Fitters & H.	90.00
Janitor $\frac{1}{2}$ month salary	50.00
Architect	500.00
	<hr/>
	850.40

20

Carpenter Finishing buckled floor fitting door and  
 locks, roof and moulding etc. 30  
 Steam Fitter Repair leaks in radiator and dis-  
 connected Gas Ranges  
 Janitor salary  
 Copy to Foulds

40

## WEEK ENDING June 18, 1927

	Carpenter	192.40
	Labor fixing lawns for seeding	15.00
	6 clothes post & setting	25.00
	Lumber in basement	36.00
	Incidentals Nails & Screws	18.00
	Albert Cassano Planting	
	Grass Seeds Check	63.46
10	Architect services	500.00
		<hr/>
		849.86

Many of the floors so badly buckled from dampness taken up and relaid, some new floors required. Lumber in basement for milk racks, nails and screws for same. Carpenter work in connection with Gas & Elec. Meters.

20 Rep. to Foulds

---

WEEK ENDING June 25, 1927

	Carpenter	192.40
	Material & Labor masking	
	garage	22.50
	Coal for hot water	23.00
30	Architect	500.00
		<hr/>
		737.90

Carpenter Finishing apt. for occupancy  
Paint & Labor marking garage spaces.  
Report to Mr. Foulds

## WEEK ENDING July 2nd 1927

Carpenters	192.40
Removal of Rubbish	7.50
Material & S	23.00
Arlington Shade Co.	50.00 Check
Architect	500.00
	<hr/>
	772.90

10

Carpenters Cutting stair strings in front of apartment doors. Fixing swolin cork floor in corridors, sanding oak floor for filling.

Removal of Rubbish

Shades for windows.

Copy to Foulds

## WEEK ENDING July 9, 1927

20

Carpenters	183.60
Supplies	11.75
Plumbers	89.00
Architect	500.00
	<hr/>
	784.35

Carpenters Relaying oak floors and re-hanging doors. 30

Oak flooring and nails

Plumber Rep. leaks in valves and bolting, toilet seats.

Copy to Foulds

40

## WEEK ENDING July 16, 1927

Carpenter	192.40
Supplies	26.00
Cartage	7.50
Architect	500.00
	<hr/>
	725.90

- 10 Carpenters Finishes apt. re-fitting doors and hardware. Erection mill worked dressers and shelves closets.  
Shelving and hardware  
Removal of rubbish  
Copy to Foulds

## WEEK ENDING July 23, 1927

20

Carpenters	192.40
Plumbers	75.00
Mat. & Sup.	30.00
Goodman Paints & varnishes	112.50 Check
Architect	500.00
	<hr/>
	909.90

- 30 Carpenters finishing and sanding floors  
Plumbers Re-setting radiators  
Self-closing springs for outside doors  
Goodman material for finishing floors  
Copy and vouchers to Foulds

40

## WEEK ENDING July 30th 1927

Carpenter	192.40
Mat. & Sup.	38.00
Mason	60.00
Architect	500.00
	<hr/>
	790.40

Carpenters Filling finished floors. Outside doors. 10  
 Removal of materials to basement.  
 Material & Supplies—springs and closing springs  
 for outside doors.  
 Mason Patching Plaster in halls and apartments.  
 Copy & V. to Foulds

---

 WEEK ENDING Aug. 6th 1927

Carpenter	192.40	20
Supplies	37.00	
Architect	500.00	
	<hr/>	
	729.40	

Carpenters On floor—ceiling and floor plates for  
 heating riser  
 Supplies Nickle floor and ceiling plates 30

## WEEK ENDING Aug. 13, 1927

Carpenter	192.40
Mat. & Sup.	27.00
Incidentals	14.00
Services of architect	500.00
	<hr/>
	733.40

- 10 Carpenters Sanding and filling finished floors.  
Supplies Paint Brushes and putty knobs  
Incidentals Rubber door bumpers

## WEEK ENDING August 20, 1927

	Carpenter	192.40
	Mat. & Sup.	34.00
20	Architect	500.00
		<hr/>
		726.40

- 30 Carpenter Finishing and filling oak floors One  
man on roof repairing  
Material 50 lbs. of roof cement. Glass & Brachs  
for French doors  
Copy of Aug. 13th and 20th with receipt sent to  
Foulds

## WEEK ENDING Aug. 27, 1927

Labor	192.40
Materials	22.75
Architect	500.00
	<hr/>
	715.15

The above was in connection with tenants for the different apartments as requested by the different tenants. 10

---

 WEEK ENDING Aug. 27, 1927

Labor	192.40
Materials	22.75
Architect	500.00
	<hr/>
	715.15

The above was in connection with tenants for the different apartment as requested by the different tenants.

Report covering Aug. 27 and Sept. 3 sent to Foulds

30

40

## WEEK ENDING Sept. 3, 1927

Labor	192.40
Materials	38.00
	<hr/>
	230.40
Architect	500.00
	<hr/>
	730.40

10

In connection with the apartments giving extra kitchen dressers and closet shelving hook, poles, etc.

Report covering Aug. 27 and Sept. 3 sent to Foulds

---

WEEK ENDING Sept. 10th 1927

20

Labor	192.40
Materials	39.50
Architect	500.00
	<hr/>
	731.90

Tenants were moving in and mechanics doing odd jobs in the apartments, finishing up so the decorator could get started.

30

40

## WEEK ENDING Sept. 17 1927

Carpenters	192.40
Materials & Supplies	34.00
Architect	500.00
	<hr/>
	726.40

Mechanics erecting kitchen dressers and other un-  
completed work to prepare for the decorator. 10

## WEEK ENDING Sept. 24, 1927

Labor	192.40
Supplies & M.	43.00
	<hr/>
	235.40
Architect	500.00
	<hr/>
	735.40

Carpenters building and erecting kitchen dressers.  
Hardware, nails, screws, springs and catches for  
the above.

30

40

## WEEK ENDING Oct. 1, 1927

Labor	192.40
Materials & Suppl.	27.50
	<hr/>
	219.90
Architect	500.00
	<hr/>
	710.90

10

Mechanics working at odd jobs in the different apartment. Erecting mill worked dressers, filling and finished floors. Getting ready for decorating.

Report and vouchers to Mr. Fould.

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 WEEK ENDING October 8th 1927

20

Carpenters	192.40
Materials & S	29.00
	<hr/>
	221.40
Architect	500.00
	<hr/>
	721.40

30

Finishing up apartments for decorating.

40

## WEEK ENDING October 15th 1927

Carpenters	184.60
Materials	17.00
Arlington Shade Co.	340.10 Check
Architect	500.00

---

 1,041.70

Labor and materials finishing apartments for deco- 10  
rating.

Shades for windows.

Work discontinued.

Disbursements Feb. 26 to Oct. 15, 1927 \$12,748.45 •

Services as per resolution of Board of  
directors, Passaic Arms. Inc. 34

Weeks @ 500. per week 17,000.00

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 29,748.45 20

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**Exhibit S & B-6.**

(Pages 73-74 of State of Case.)

Minutes of meeting of the Board of Directors of PASSAIC ARMS, INC., held on Tuesday, the eight day of March, 1927 at two o'clock PM.

10 A communication from John Paul Gibson, a real estate broker of Passaic, N. J., was discussed in relation to the renting of the apartments and upon resolution duly made and carried an agreement was entered into with said John Paul Gibson and Passaic Arms, Inc., whereby Mr. Gibson was to have exclusive right to lease the apartments and to receive a commission of five per centum for the term of the lease, said commission to become due and payable upon the signing of each lease.

20 Upon motion duly made and carried Mr. Seaman and Mr. Baer were duly authorized to purchase the necessary labor and materials also kitchen cabinets, gas ranges, window shades, paints and varnishes and other necessary materials to complete the apartments for occupancy for May 1st, 1927.

30 Mr. Seaman stated the hot water system and also the heating system were incomplete and defective, that he had consulted with Richardson & Boynton, heating engineers and after several examinations and experiments it was decided that the arrangement of piping be changed and a new hot water heater be furnished and placed in a different location with connections according to a drawing submitted by the heating engineers and upon motion duly made and seconded Mr. Seaman was authorized to enter into a contract with Richardson & Boynton for their services in supervising such changes and also for all labor and materials or otherwise becoming necessary to make efficient the service of the defective system.

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**Exhibit S & B-7.**

(Page 74 of State of Case)

## ORDER APPOINTING PERMANENT RECEIVER

Filed October 13, 1927

## IN CHANCERY OF NEW JERSEY

Between LOUIS LEVY, Complainant, and PASSAIC ARMS, INC., a corporation, Defendant.	}	10  On Bill, etc.  Order Appointing Permanent Receiver
---------------------------------------------------------------------------------------------------	---	-----------------------------------------------------------------------------

This matter being opened to the Court by Harry H. Weinberger, Esq. of the firm of Weinberger & Weinberger, Esqs., Solicitors of Complainant, in the presence of Andrew Foulds, Jr., Solicitor of Defendant, and the Court having heard the respective arguments of counsel and the affidavits introduced by them and being satisfied that the prayer of the Bill of Complaint should be granted.

It is, on this seventh day of October, 1927, ORDERED that James J. Murner of the City of Paterson, County of Passaic and State of New Jersey, be and he is hereby appointed permanent receiver, to take charge of and conduct all the business, franchises, and privileges of Passaic Arms, Inc., a corporation, of the State of New Jersey, to have complete control and dominion over all the business, effects and holdings of said corporation, hav-

20

30

40

ing the same powers vested in him as were heretofore, and are now vested in said corporation, with the same powers and duties as were those of the Passaic Arms, Inc., a corporation.

10 And it is further ORDERED that said Passaic Arms, Inc., a corporation be and is hereby restrained and enjoined from exercising any of its privileges or franchises, and from collecting any debts, and from paying out, selling, assigning or otherwise transferring any of its estate, moneys, funds, lands, tenements, or effects, except to the receiver, appointed by this Court, until the further order of this Court.

20 And it is further ORDERED that John Paul Gibson, agent of defendant, Passaic Arms, Inc., a corporation, do hereby forthwith turn over to the said permanent receiver all leases, books of account and other books and documents in connection with the rentals of and documents in connection with the rentals of and concerning the apartment house known as "Passaic Arms" in the City of Passaic, and that the said John Paul Gibson, do immediately and forthwith render to the said permanent receiver, a true accounting also the rents which have been collected thus far and to date, said accounting to be under oath; and that the said John Paul Gibson do also forthwith turn over to the said permanent receiver, all moneys which he now has in his possession and which have been collected as rentals or otherwise from the apartment house known as "Passaic Arms" in the City of Passaic.

30 And it is further ORDERED that a copy of this order, certified by the solicitors of the complainant, be served on Passaic Arms, Inc., a corporation, and

40

on its stockholders, and on John Paul Gibson, within five days from the date hereof, by mailing a letter to their last known addresses.

It is further ORDERED that the said permanent receiver, file an additional bond with this Court in the sum of Ten thousand dollars, and duly qualify thereunder to be approved as to form and surety by any Special Master.

10

E. R. WALKER,  
C.

Respectfully advised,  
VIVIAN M. LEWIS, V. C.

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**Exhibit R-1.**

(Page 99 of State of Case.)

20

Check in amount of \$142.00, payable to the order of Richardson-Boynton and signed as follows. Philip Baer, Treasurer, Passaic Arms Inc.

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**Exhibit R-2.**

(Page 99 of State of Case.)

30

Check dated 4/15/27 to the order of Arlington Shade Company in the amount of \$100.00 and signed by Passaic Arms Inc.

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**Exhibit R-3.**

(Page 100 of State of Case.)

Check dated 6/14/27 to the order of Albert Cassano in the amount of \$63.46 and signed by Passaic Arms Inc.

10

**Exhibit R-4.**

(Page 100 of State of Case.)

Check dated 5/31/27 to the order of Public Service Electric & Gas Co. and signed by Passaic Arms Inc., Philip Baer.

20

**Exhibit S & B-14.**

(Page 134 of State of Case.)

Minutes of a meeting of the Directors of Passaic Arms, Inc., held at the office of the company on the fifth day of December, 1925.

All directors present.

On motion duly seconded and by unanimous vote the following resolution was adopted:

30

RESOLVED that Preston B. Seaman, be and he is hereby employed, authorized and empowered and directed to prepare all the plans, specifications and form of contracts, together with the necessary full size details and scale drawings etc., for the erection and full completion of a four story and basement fireproof apartment house to contain twenty-seven apartments and a fireproof garage building for the storage of twenty-seven motor vehicles. All to be

40

located on the property situated on the southeasterly side of Passaic Avenue 202.84 feet north of Brook Avenue, City and County of Passaic and State of New Jersey.

In addition to the above you will furnish for the use of the various mechanics all required drawings, blue prints, details and specifications for their use in the construction of said buildings and for estimating that may be required during the progress of the work to the final completion of same together with your services as an architect in supervising said work as may be required while the buildings are in course of construction. 10

The compensation for said work, services, plans, specifications etc., to be the legal commission or fees as allowed Architects according to the schedule of fees adopted by the American Institute of Architects, to wit: Ten per centum of all monies expended for labor and materials, or otherwise necessary for the construction and completion of said apartment house and garage building. 20

PHILIP BAER,  
Secretary.

30

40

**Exhibit CM-2.**

(Page 137 of State of Case.)

JOHN PAUL GIBSON  
NATIONAL BANK BLDG.,  
PASSAIC

655 Main Ave.  
Phone 5311 Passaic

10 THIS AGREEMENT made this eighth day of March,  
1927 between

*Preston B. Seaman of Passaic, N. J.*

and

*Philip Baer of New York City*

hereinafter called the principals and John Paul  
Gibson of Passaic, New Jersey hereinafter called  
the agent witnesseth:

20 Said principals have this day placed with said  
agent, for renting and leasing of the Passaic Arms  
Apartment House of which said principals are the  
owners, located in the City of Passaic and State of  
New Jersey.

30 Said agent shall have exclusive right to rent and  
lease said apartments in the Passaic Arms Apart-  
ment House. Said agent shall receive a commis-  
sions of (5%) for the term of the lease, which com-  
mission is due and payable on the signing of the  
lease for each apartment.

In the event other agents have tenants for said  
apartments and communicate with the principals,  
said principal are to refer said agents to the rent-  
ing agent John Paul Gibson who is to settle all  
commissions.

.....  
.....

**Exhibit S & B-15.**

(Page 141 of State of Case.)

Twelve cancelled checks each drawn upon the Seventh National Bank of New York and each signed by Philip Baer.

(1) #104 dated 2/18/27 to the order of Cromwell Reid & Co. in the amount of \$300.00.

(2) #108 dated 3/9/27 to the order of Henry L. Butler in the amount of \$41.34. **10**

(3) #109 dated 3/9/27 to the order of Braverman Marble Works in the amount of \$25.00.

(4) #109 dated 3/12/27 to the order of Van Dyk Furniture Co. in the amount of \$200.00.

(5) #110 dated 3/14/27 to the order of H. W. Miller & Co. in the amount of \$66.27.

(6) #124 dated 5/13/27 to the order of John Parkins in the amount of \$50.00. **20**

(7) #126 dated 5/16/27 to the order of Fidelity Union Trust Co. of Newark, N. J. in the amount of \$1161.88.

(8) #128 dated 5/17/27 to the order of Van Dyk Furniture Co. in the amount of \$213.00.

(9) #130 dated 5/19/27 to the order of D. Schumer in the amount of \$65.00. **30**

(10) #132 dated 5/21/27 to the order of Cash in the amount of \$9.00.

(11) #136 dated 7/1/27 to the order of Arlington Window Shade Co. in the amount of \$50.00.

(12) #139 dated 7/21/27 to the order of B. Goodman in the amount of \$112.50.

**Exhibit S & B-16.**

(Page 145 of State of Case.)

Three cancelled checks of the following tenor:

(1) #114 dated 3/19/27 drawn upon the Seventh National Bank of New York to the order of Matt. Strong in the amount of \$33.60 and signed by Philip Baer.

10 (2) #113 dated 3/19/27 drawn upon the Seventh National Bank of New York to the order of W. J. Ryder in the amount of \$39.20 and signed by Philip Baer.

(3) Check dated 3/19/27 drawn upon The Corn Exchange Bank, Harlem Branch, 125th St. and Lenox Ave., to the order of John Kleinhammer in the amount of \$23.80 and signed by Julia Baer, Philip Baer, Attorney.

20

**Exhibit S & B-17.**

(Page 147 of State of Case.)

Two cancelled checks each drawn upon the Seventh National Bank of New York and each signed by Philip Baer of the following tenor:

30 (1) #123 dated 5/13/27 to the order of Wm. J. Ryder in the amount of \$150.00.

(2) #131 dated 5/20/27 to the order of Wm. J. Ryder in the amount of \$226.00.

40

**Exhibit S & B-18.**

(Page 148 of State of Case.)

Judgment Satisfaction Piece of Municipal Court of  
New York

Index Number 9905 Year 1927

MUNICIPAL COURT OF THE CITY OF NEW YORK  
BOROUGH OF MANHATTAN—SIXTH DISTRICT **10**

Names of parties against whom Judgment has been obtained.	Names of parties in whose favor judgment has been obtained.
-----------------------------------------------------------------	-------------------------------------------------------------------

Philip Baer

Max Hirschman and  
John Jacobs doing  
business as Arlington  
Shade Co.

Am't of Judgment	Date of Rendi-	<b>20</b>
Damages \$306.60	tion of Judg.	
Costs 33.50	Nov. 30, 1927	
<hr/>		
\$340.10		

Name of Att'y for Judg. Creditor	Date Judg. was satis.	
Paul D. Kaufman	Apr. 8, 1929	<b>30</b>

STATE OF NEW YORK }  
 CITY & COUNTY OF N. Y. } ss.:

I, CHARLES J. DUNN, Clerk of the Municipal Court of the City of New York, Borough of Manhattan, Sixth District do hereby certify that the foregoing is a correct Transcript from the Docket of Judgments kept in my office of a Judgment rendered in said Court.

10 I further certify that the said judgment is satisfied and discharged of record.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court this 8th day of April, 1929.

TERENCE V. FARLEY,  
 Clerk.

20 Seal of Municipal Court of the City of New York—  
 6th District, Borough of Manhattan.

30

40

**Exhibit CM-1, Feb. 27, 1930.**

(Page 176 of State of Case.)

Labor performed and material furnished in  
completing

PASSAIC ARMS APARTMENTS.

Week ending June 4th 1927

Painting & Decorating—Completing apartments **10**  
ready for occupancy.

No carpenter work has been done this week, but  
same will be resumed next week.

The window screens are ready for delivery and  
erection.

The lawn and garden work will begin next week.  
Scrub woman cleaning apartments.

Respectfully submitted, **20**

PRESTON B. SEAMAN,  
Architect.

**30****40**

Summary of work done in completing Passaic Arms  
A'pts.

Week ending May 7th 1927

Building walks & Drives

Carpenter work

- 10 Two carpenters—Refitting doors and adjusting hardware. Putting up kitchen doors. Repairing buckled oak floors (finished).  
Painting & Decorating—Varnishing finished floors. Painting bath room ceilings and side walls above tile. Staining and varnishing birch doors.  
Cleaning—Two scrub women.

Week ending May 14th 1927

- 20 Concrete floor in garage completed.  
Water bound macadam drives completed.  
Building catch basins to receive rain water.  
Laying blue stone walks.  
Grading about 75% complete.  
Carpenter work  
Two carpenters—Adjusting doors and hardware. Repairing buckled finished floors.  
Kalamein work—Finishing smoke doors. Tenement House reg.
- 30 Painting & Decorating—Varnishing finished floors. Staining & varnishing birch doors.  
Sidewalks—Replacing broken cement sidewalk.

PRESTON B. SEAMAN,  
Architect.

**Exhibit S & B-4, Feb. 27, 1930.**

(Page 182 of State of Case.)

Papers to show completion work done and  
materials furnished.

BILLS MUST BE PUT IN EVERY PACKAGE

H. W. MILLS &amp; Co.

HARDWARE

218-224 Washington Pl.,

10

Phone Passaic 2890

Passaic, N. J. 3/27/27

Sold by Van

2 Grs. Screws 28  $\frac{3}{4}$  x 8 \$ .56

Passaic, N. J. 3/15/27

Sold by SWB Am't Rec'd 1.00

1½ Doz. 1½" x 14 ft.

Brass Screws .45 20

DELIVERY TICKET

Paterson, N. J. 3/17/27

Mr. Preston B. Seaman

158 Gregory Ave. Passaic, N. J.

Received from H. W. Mills &amp; Co.

Del. to Mr. Rider

100 Hat &amp; Coat Hooks

75 ft. Hex Netting

30"—1" Mesh

30

Paterson, N. J. 3/18/27

15 ft. Hex Netting

30-1-20

35 Wood Dowel 1½-7

35 " " 1½-8

40

No. 778

DENMAN POWERS  
 HARDWARE, TOOLS AND MILL SUPPLIES.  
 361 Passaic Street

Tele. 83-Passaic

Passaic, N. J. April 29, 1927

10

Sold to P. B. Seaman

8 pairs 2 x 2 Nickle Bulk	\$2.00
4 .....	.40
4 Nickle Cupboard Copper	.60
	\$3.00

Paid

F. W. BAUER.

20

RICHARDSON & BOYNTON Co.  
 260 Fifth Avenue, N. Y.

P. B. Seaman,  
 Passaic Arms,  
 Passaic Ave. Nr. Brook Ave.,  
 Passaic, N. J.

30

Shipped from Glendale Warehouse 4/14/27

Paid Baldw. C. O. D. 142.50

1 #8 Richardson Indirect Heater

Per V. V.

40

NEWMAN MANUFACTURING CO.  
Cincinnati, O.

Ship to Preston B. Seaman  
449 Passaic Ave. Passaic, N. J.

P. B. Seaman,  
158 Gregoray Ave.  
Passaic, N. J.

One T5 genuine bronze saddle 4' 0" x 6"	\$20.00	10
One T5 " " " 5' 2" x 6"	26.25	
Two T6 " " " 3' 0" x 5"	22.20	
	<hr/>	
	\$68.45	
Less 25% discount	27.11	
Net	\$41.34	

Please note error against you.

You allowed 20% off price list to General Industrial, which made the price to them \$54.75. 20

They claim this material can be bought in New York and delivered at the job for \$40.00. Can you give me this at about the same figure. I cannot pay over \$45.00.

PRESTON B. SEAMAN.

Received payment 3/17/27 30

H. L. BUTLER,  
By H. LEIT.

Having made the above error we will stand by it. The quotation in this case will be \$41.34.

H. L. BUTLER,  
871 Broad St.,  
Newark, N. J. 40

D. SCHUMER  
163 Monroe Street  
Phone Passaic 1933

Passaic, N. J. May 17, 1927

Mr. Preston B. Seaman  
158 Gregory Ave.,  
Passaic, N. J.

- 10 Covered 4 doors, joints and casings with  
gold, iron for Passaic Arms Apartments  
located at Passaic Ave., City as agreed. . \$65.00

D. SCHUMER

---

BRAVERMAN MARBLE WORKS  
818-822 Paterson Ave.  
East Rutherford, N. J.

Mar. 17, 1927

- 20 P. B. Seaman,  
158 Gregory Ave.,  
Passaic, N. J.

Dear Sir:

As per 'phone conversation prices of Italian  
marble will be as following:

- |    |                                  |         |
|----|----------------------------------|---------|
|    | Four 4 pc. 5' 0" x 6" F & B Shop | \$17.60 |
|    | Two 2 pc. 1' 0" x 6" Setat Bldg. | 25.00   |
| 30 | Four 4 pc. 5' 0" x 8" }          | \$34.00 |
|    | Two 2 pc. 1' 0" x 8" }           |         |
|    | Setat Bldg.                      |         |

Hoping to receive your order, we remain,

Very truly yours,

BRAVERMAN MARBLE WORKS  
I. BRAVERMAN

H. W. MILLS & Co.  
 MANUFACTURERS' AND MILL SUPPLIES  
 218-224 Washington Place,  
 Passaic, N. J.

May 28, 1927

Sold to Preston B. Seaman,  
 Passaic Arms Apartment,  
 Passaic, N. J. 10

		Am't	
Mar. 17	100 H & C Hooks	1.50	
	75 ft Hex Netting 30" 1" Mesh	3.53	
18	15 ft " " 30" 1" "	.94	
18	35 Wood Dowels 1 $\frac{1}{4}$ x 7" ft @ 40	14.00	
	35 " " 1 $\frac{1}{4}$ x 8 ft @ 40	14.00	
		33.97	20

Credits.

35 Wood Dowels 1 $\frac{1}{4}$ x 12 ft @ 50	17.50
540 Blk H & C Hooks @ 2.15 gr	8.07
	25.57

A'mt	\$33.97	
Credits	25.57	30
	8.40	
Bal. Due	8.40	

## NATIONAL ELECTRIC COMPANY

583 Main Avenue,

Passaic, N. J.

June 14, 1927

	Sold to Passaic Arms,	
	c/o P. B. Seaman	
	158 Gregory Ave.,	
10	Passaic, N. J.	
	June 6 Installing 1 base plug in apart. 3C (Mrs. Walsh)	
	Additional light on Dr. Johnson's Apt.	
	22 ft. metal moulding	.09 1.98
	2 moulding switch boxes	.22 .44
	2 external elbows	.16 .32
	8 moulding straps	.08
20	1 2½" moulding outlet box	.22
	3 gem boxes	.25 .75
	3 duplex plugs and plates	1.40 4.20
	1 single pole sw. and plate	.65
	6 brass furrells	.12
	45 ft B & X cable	.06 2.70
	3 bls plaster	.07 .21
	95 ft #14 wire	.95
	30 ft ½" pipe	.10 3.00
30	2 ½" L B conduit	.40 .80
	2 blank conduit	.08 .16
	1 1 hole drop cover	.10
	1 3" round box	.16
	5 ft. reinforced cord	.04 .20
	1 adjusting ball	.04
	1 mainline cutout	.35
	2 3 amp. fuses	.06 .12
	1 bell transformer	4.50
	1 small bell transformer	1.75
40	1 iron box 4 x 6 x 12	1.70

1 man (Wm. Schell) 28½		
hrs.	2.00	57.00
Inspection		1.50
10½" lockouts and bushings	.05	.50
4½" V V straps	.05	.20
4 lead shields and lags	.10	.40
1 pull ch. porc. socket		.50
1 B X connector		.06
2 toggle bolts	.12	.24
1 outside bracket		9.50
		<hr/>
		95.40

---

Passaic, N. J. 5/19/27

May 18	Repairing bells and door openers (W. Schell)	3.00	
			20

---

Passaic, N. J. 5/16/27

May 13	Electrical work at the Passaic Arms Apts.		
	Material	3.55	
	Labor	8.00	
		<hr/>	
		11.55	30

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Passaic, N. J. 5/3/27

May 2	40 10 w. 120 V. Clear Lamps	.25	10.00
-------	-----------------------------	-----	-------

Passaic, N. J. 5/4/27

May 2	Passaic Arms Apartment.	3F		
	Mrs. Brown			
	side light out-fuse blown			
	1 pin switch for side light			.70
	1 man (Orie) 1½ hrs.	2.00		3.00
				<hr/>
				3.70

10

Passaic, N. J. 5/27/27

May 24	Repairing kitchen light in Apt.			
	3 C (Furrell)			2.00

DYER-KANE COMPANY, Dr.  
Contractors

20

Passaic, N. J. May 20, 1927

Mr. Preston B. Seaman,  
Passaic Arms Apartment, Passaic Ave.,  
Passaic, N. J.

	Shovel Hire with Crew		200.00
	Grader rental 3 days	15.00	45.00
30	Roller rental 5½ days	20.00	110.00
	Mixer rental		75.00
	2 tons coal	8.00	16.00
	215 gals gas	.18	38.70
	10 gals. oil	1.00	10.00
	15 cu. yds. Screenings	3.50	52.50
	20 cu. yds. ⅜" Stone	3.50	70.00
	75 cu. yds. ¾" "	3.25	243.75
	105 " " 1" "	3.25	341.25
40	165 " " 1½" "	2.85	470.25

	68 cu. yds. Sand	1.75	119.00	
	553 Bags Cement	.65	359.45	
	1200 gals. oil hand hosed	.25	300.00	
	1420 sq. ft. Blue Stone			
	Flag	10.	142.00	
	25 pcs. 1x8—12 N. C.			
	Edge Rfrs. 200 ft			
	42.50 M		8.50	
	12 pcs. 1x8—12 N. C.			
	Edge Rfrs. 96 ft 42.50			10
	M		4.08	
	90'—8" Pipe	.36	32.40	
	2'—8"x8" Y's	1.44	2.88	
	4'—8"x8" Elbows	1.44	5.76	
	1080# Structural Beams	.06	64.80	
Apr.	14 Labor Pay Roll		26.70	
	21 "		142.40	
	28 "		138.05	
May	5 "		761.65	20
	12 "		541.30	
	19 "		195.00	
	Trucking		130.29	
	Insurance on Labor		56.32	
			<hr/>	
			4,703.03	
		Plus 15%	705.45	
			<hr/>	
			5,408.48	30

H. L. BUTLER  
 801 Wiss Bldg.,  
 671 Broad St.  
 Newark, N. J.

Sept. 12, 1927

Mr. Preston B. Seaman,  
 455 Passaic Ave.,  
 Passaic, N. J.

10 Dear Mr. Seaman:

We are awaiting word from you relative to our letter about the set of brass numerals for use on the apartment doors at Passaic Arms, in conjunction with the brass knockers and card frames.

We are going ahead with your order for the radiator cover, substituting a solid steel top in place of the perforated top as shown in our letter of June 10th.

20 If convenient, please let us hear from you soon regarding the brass numerals, and greatly oblige,

Yours very truly,

H. L. BUTLER

HLB/A

	Bronze numerals & letters for apartment doors, 54 @ .55	\$29.50
	Knockers for same, 27 @ 2.00	54.00
30	Card holders for same, 27 @ .50	13.50
		<hr/>
		\$97.00
	Grille for front hall radiator	96.00
		<hr/>
		\$193.00

The above quotation includes installation for grills only.

ORANGE SCREEN COMPANY  
515 Valley Street,  
Maplewod, N. J.

June 3, 1927.

Passaic Arms Inc.,  
Passaic Avenue,  
Passaic, N. J.

10

Att'n Mr. Seaman:

I am enclosing herewith a bill for the amount of screens that will be delivered within two or three days, a total of 192 at a value of \$519.00.

These screens will of course be delivered C. O. D. and if you will have a check ready for this amount during the early part of next week, leaving same available at the apartment house for the driver.

20

After this, we will have an installation man follow right up for prompt installation. This is in accordance with our phone conversation of even date.

Very truly yours,

ORANGE SCREEN COMPANY  
W. E. PALARDY  
Credit Manager

WEP:RD

30

40

VANDYK FURNITURE CO.  
500 Main St.  
Paterson, N. J.

March 21, 1927.

Mr. Philip Baer,  
225 West 98th St.,  
New York.

Dear Sir:

10 We are ready now with all but the 8 sink cupboards, and these we expect to receive most any day, to give you delivery of the merchandise ordered of us on March 8th, a bill of which is enclosed.

Because of the many difficulties that have arisen lately in connection with the completion of the Passaic Arms Apartments, our Mr. Barrowclough visited Mr. Seaman who, in connection with yourself is finishing the apartment job in question.

20 Mr. Seaman suggested that we write you.

We would much prefer that you forward us your check for the merchandise in question before delivery is made. Please "get us right" in this respect that our request is not a personal reflection, upon yourself or Mr. Seaman, whatsoever. There has been so much controversy in connection with the apartment job in question, which undoubtedly does not affect you both in the least, that we feel that rather than bringing another party into the controversy in question, it would be much better all the way around if you will send us a check before the delivery of the merchandise is made.

30

As soon as we receive your check, we will immediately proceed to make delivery of the merchandise that is now ready.

Very truly yours,

VAN DYK FURNITURE COMPANY

H. H. VAN SAUN

Vice President & Treasurer

40

HHVS:GC

PASSAIC-BERGEN LUMBER Co.  
South End of Main Ave.

Passaic, N. J., Apr. 25, 1927

Mr. Preston B. Seaman,  
Passaic Arms,  
Passaic Arms, Passaic, N. J.

2 1 $\frac{1}{4}$ x 3 $\frac{3}{4}$ 14 W. P.	)		10
1 1 $\frac{1}{4}$ x 3 $\frac{3}{4}$ 12 W. P.	)	\$7.80	
16 Sq. ft. 1 x 6 N. O. T. & G.	)		

Paid Blauvelt

Passaic, N. J., Apr. 20, 1927

2 1 $\frac{1}{4}$ x 2 $\frac{1}{2}$ 3/6	)		20
2 1 $\frac{1}{4}$ x 3 3/6	)		
2 1 $\frac{1}{8}$ x 3 3/6	)	1.20	
2 1 $\frac{1}{8}$ x 2 $\frac{1}{2}$	)		
6 3 x 6 Panels		12.96	
		<hr/>	
		14.16	
Less stock returned			
100 lin. ft. 1 x 8 WW	)		
1 pr. dresser doors	)	9.11	30
2/8 x 2/0 comp.	)		
		<hr/>	
Balance due		\$5.05	

Paid C. O. D.

PASSAIC LUMBER Co.  
South End of Main Ave.

Passaic, N. J., May 5, 1927

Passaic Arms

	10	1 x 12 12 W. P. Shelv.	)	
		21 sq. fr. 1 x 3 Oak	)	11.35
	10			
		Paid		

Passaic Bergen Lumber Co. Seal

Passaic, N. J., Apr. 14, 1927

	20	1 x 12 6/0 WW	)	
		45 lin. fr. 1 x 8	)	
		12 in. fr. 1 x 10	)	
		18 lin. fr. 1/2 x 8	)	
		6 lin fr. 1/2 x 10	)	
		35 lin. fr. 1 x 6	)	9 \$45.50
		100 lin. fr. 1/2 x 8	)	
		1 1 1/8 x 12 x 8	)	
		12 1 x 12 12 W. P.	)	
		1 Pair Dresser Doors 2/8 x 2/0 Cyp.)		
	30	Paid on a/c		20.00
				<hr/>
				25.50
		Paid Giant		

RICHARDSON & BOYNTON Co.  
260 Fifth Avenue,

New York, April 14, 1927

Mr. P. B. Seaman,  
158 Gregory Ave.,  
Passaic, N. J.

Dear Sir:

10

We are making shipment of the No. 8 Indirect Water Heater, for the Passaic Arms Apartments and the same will be delivered at the building Saturday morning.

On account of our foundry closing down tonight for the balance of the week, we cannot get a mechanic from Dover to do the tapping necessary on the No. 255 steam boiler until Monday morning and the writer has made arrangements to meet them at the D. L. & W. station at Passaic, at 8.35 Monday morning and will proceed immediately to the apartments and instruct them how to make the tappings and at the same time will show you or your mechanic just how the foundation is to be built for the indirect heater and also how the same is to be piped up.

20

Very truly yours,

RICHARDSON & BOYNTON Co.  
W. D. CLARK

30

MD

40

BRISK DAMPROOFING CO. INC.  
108 Park Avenue,  
New York.

October 31st 1927

Passaic Arms Inc.,  
455 Passaic Ave.,  
Passaic, N. J.

10

REQUISITION FOR WATERPROOFING AT  
Passaic Arms Apts.,  
Passaic, N. J.

Amount of contract	3000.00
Amount of work completed to date	2000.00
Credit by payment on account	500.00
Amount of this requisition	1500.00

20

EMPIRE BOND & MORTGAGE CORPORATION  
42nd at Madison Avenue,  
New York.

August 1, 1927

John Paul Gibson, Esq.,  
National Bank & Trust Co. Bldg.,  
Passaic, N. J.

30

Dear Mr. Gibson:

On June 14, 1926 the Empire Bond & Mortgage Corporation executed a building and loan agreement with Passaic Arms, Inc. by the terms of which agreement the Empire Bond & Mortgage Corporation agreed to loan the Passaic Arms, Inc. the sum of \$215,000. There is still to be advanced on said building and loan agreement the sum of \$29,939.78.

40

This amount is subject to certain charges which the Passaic Arms Inc. have agreed to pay under the terms of said building and loan agreement, which charges will amount to approximately \$400.00, leaving a net balance due the Passaic Arms, Inc. of approximately \$29,500.00. The Empire Bond & Mortgage Corporation is prepared to pay the last amount mentioned to the Passaic Arms, Inc. when waivers of lien, and/or satisfactions, and/or general releases have been procured from all persons who have furnished labor and materials going into the construction of the building, in accordance with the terms of the building and loan agreement. 10

Very truly yours,

G. J. FLEISCHMANN  
Vice President 20

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**Exhibit S & B-9, Feb. 27, 1930.**

(Page 198 of State of Case.)

WEINBERGER & WEINBERGER  
Counsellors at Law  
Passaic, N. J.

July 10, 1928

10 Charles B. Alling, Esq.,  
342 Madison Ave.,  
New York City.

Re: Levy vs. Passaic Arms

Dear Sir:

We are herewith enclosing copy of affidavit made  
by Preston B. Seaman and a copy of affidavit made  
20 by John Paul Gibson, regarding the alleged pre-  
ferred claims in the above matter.

Have you any objection to the receiver paying  
these claims, and if not will you kindly advise us  
to that effect.

Very truly yours,

WEINBERGER & WEINBERGER

JBS:HB

30 Enc.

**Exhibit S & B-10, Feb. 27, 1930.**

(Page 198 of State of Case.)

## IN CHANCERY OF NEW JERSEY.

Between

LOUIS LEVY,  
Complainant,

and

PASSAIC ARMS, INC., a corporation,  
Defendant.

On Bill, etc.

10

NOTICE.

To CHARLES B. ALLING, ESQ.,

SOLICITOR OF PRESTON B. SEAMAN AND

A. EDWARD BAER

20

TAKE NOTICE that we shall apply before the Chancellor at the Chancery Chambers in the City of Jersey City on Monday, July 2nd, 1928, or such Vice Chancellor as shall then be sitting in his place and stead, at ten o'clock in the forenoon of that day, for an order allowing James J. Murner, receiver of Passaic Arms, Inc., to pay out certain claims to certain creditors, who performed labor and services and furnished materials to the building known as Passaic Arms, in the City of Passaic, at the express request of Preston B. Seaman and John Paul Gibson.

30

WEINBERGER & WEINBERGER,  
Solicitor for and of Counsel with James J.  
Murner, Receiver of Passaic Arms, Inc.

Dated: June 22, 1928.

40

**Exhibit S & B-11, Feb. 27, 1930.**

(Page 198 of State of Case.)

July 20, 1928

Weinberger & Weinberger, Esq.,  
 Service Trust Bldg.,  
 Passaic, N. J.

10

Levy v. Passaic Arms, Inc.

Gentlemen:

Referring to your letter of July 10th enclosing copy of affidavits and requesting information as to whether my clients have any objection to paying the claims referred to in the two affidavits, I beg to state that they have no objection to the payment of the claims listed or the amounts except those of Brisk Water Proofing Co., Orange Screen Company, Joseph Kovalzsich and William A. O'Brien.

20

Very truly yours,

CBA/LU

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**Exhibit R-1.**

(Page 205 of State of Case.)

Letter dated 5/2/27 from Passaic Arms Inc. to John Paul Gibson.

"You are hereby authorized and employed in the capacity of managing agent for Passaic Arms Apartments, Passaic Avenue, Passaic, New Jersey.

"As agent you will collect and receive the rents; to let and re-let the said premises or any part thereof; to make or cause to be made necessary repairs and alterations as may be deemed necessary by Passaic Arms, Inc., or its architect, and to make disbursements therefor as may be authorized by said Passaic Arms, Inc. or its architect. You will also make the monthly payments to the Empire Bond & Mortgage Corporation of New York City according to the building and loan agreement.

"The compensation for the above services to be the legal compensation as allowed under the schedule of the Real Estate Association.

Very truly yours,

PASSAIC ARMS, INC.,  
By PRESTON B. SEAMAN,  
President."

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**Exhibit R-2.**

(Page 205 of State of Case.)

Contract of 3/2/27 between Seaman and Baer and Gibson.

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**Exhibit R-3.**

10 (Page 206 of State of Case.)

36 checks signed by John Paul Gibson drawn on Passaic National Bank & Trust Co. Offered to show money expended by John Paul Gibson toward completion of the building.

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**Exhibit R-4.**

20 (Page 210 of State of Case.)

Receipt dated 8/9/27 signed by John Kleinhammer and reading as follows: "Received from Mr. John Paul Gibson \$63. for carpenter work done on Passaic Arms Apartment.

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**Exhibit R-5.**

30 (Page 210 of State of Case.)

Receipt dated 8/2/27 signed by John Kleinhammer for \$41.81 for work done on Passaic Arms Apartment as carpenter.

**Exhibit R-6.**

(Page 210 of State of Case.)

Receipt dated 9/13/27 signed by I. Coler in full payment for plumbing \$354.00.

**Exhibit R-7.**

(Pages 210-211 of State of Case.)

10

Three receipts reading as follows:

"Received from Passaic Arms Inc. the sum of \$11.20 for carpenter work for week ending 4/8/27" signed by Wm. J. Rider; and also on same paper receipt for the sum of \$46.26 for carpenter work and hardware for week ending 4/8/27 signed by Wm. J. Rider; also receipt for the sum of \$27.20 for carpenter work for week ending 4/8/27 signed by John Kleinhammer and at the bottom of page: "Examined and found to be correct" signed by "Preston B. Seaman, Architect."

20

**Exhibit R-8.**

(Page 211 of State of Case.)

Receipts from Wm. J. Rider in amounts of \$30.20 and \$70.20 from Kleinhammer in the amount of \$47.18 all for week ending 4/15/27. All three receipts are on same sheet at bottom of which are the words: "Examined and found correct" by Preston B. Seaman.

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**Exhibit R-9.**

(Page 212 of State of Case.)

Note as follows: "May 10, 1927. Four months after date we promised to pay to the order of Aberdrate Bros. \$117.25 at the National City Bank, Wall Street, New York" signed "Passaic Arms Inc. Philip Baer, Secretary and Treasurer"; endorsed "Preston B. Seaman.

10

**Exhibit R-10.**

(Page 212 of State of Case.)

Note dated 5/10/27 payable three months after date to the order of Abendrate Bros. for \$117.25 made by Passaic Arms Inc., Philip Baer, Secretary & Treasurer and endorsed by Preston B. Seaman & Philip Baer.

20

**Exhibit R-11.**

(Page 212 of State of Case.)

Noted dated 5/10/27 for \$117.25 payable two months after date made by Passaic Arms Inc. Philip Baer, Secretary & Treasurer with the endorsement of Preston B. Seaman & Philip Baer.

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**Exhibit R-12.**

(Page 213 of State of Case.)

Note dated 5/10/27 to Abendrate Bros. for \$117.25 made by Passaic Arms Inc., Philip Baer, Secretary and Treasurer.

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**Exhibit R-13.**

(Page 214-215 of State of Case.)

Bills, the following of which were read into the record:

1. William Raisin \$20.50.
  2. H. W. Mills & Company \$28.50.
  3. Reliable Furniture Company \$40.
  4. Public Service Elec. & Gas Co. \$347.67.
  5. National Electric Company \$70.91. 10
- Examined and found correction Preston B. Seaman.
6. A. R. Barton \$3.00.
  7. Ice by Wire Corporation \$70.00.
  8. Campbell, Morrell & Company \$55.00.
  9. Glass & Ostraw Coal Company \$126.00.
  10. Passaic Bergen Lumber Company \$381.40.
  11. Jon Kleinhammer \$216.81. 20  
June 22nd—July 23rd.
  12. Allen D. Seaman \$30.
  13. Denman Towers \$20.
  14. William A. O'Brien \$53.75.
  15. John J. O'Leary Company \$287.45.
  16. Manhattan Rubber Mfg. Co. \$81.70.
  17. W. J. Rider \$101.20 Aug. 2, 1927.
  18. John Kleinhammer \$41.81 paid Aug. 2, 1927.
  19. Samuel Smith & Sons \$21.83. 30
  20. W. J. Rider April 22, 1927; \$63. for wages for Saturday to Friday preceding.
  21. John Kleinhammer \$38.25 paid Apr. 22, 1927 for Friday to Thursday preceding.
  22. W. J. Rider \$36.20 for lumber, cement and sandpaper.
  23. Joseph Kovalbesik paid Oct. 1, 1927 \$124.00 work repairing garage. 40

**Exhibit S & B-1, March 13, 1930.**

(Page 237 of State of Case.)

JOHN PAUL GIBSON  
National Bank & Trust Co. Bldg.  
Passaic, N. J.

Mar. 21, 1928

10	Arlington Window Shade Co. O.K.P.B.S.		
		Bal.	\$250.00
	Van Dyk Furniture Co. O.K.P.B.S.		439.54
	Abendroth Brothers Ranges		
	Eight more notes at 117.25 O.K.P.B.S.		938.00
	Water proofing		
	Brush Dampproofing Co. Inc.		
	O.K.P.B.S.*		2500.00
	A. Golden Top soil O.K.P.B.S.		85.00
	Slaff & Ostuw Coal Co. O.K.P.B.S.		31.50
20	William O'Brien Coal in question as to quantity		950.00
	Joe Kovalycsik for making garage water tight	Bal.	124.00
	The Manhattan Rubber Mfg. Co.		
	O.K.P.B.S.		200.20
	William Rasin (Decorator) to be investigated substantially correct P.B.S.		577.15
	Orange Screen Co. (Screens)*		486.40

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\*Contract not complete.

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## New Jersey Court of Errors and Appeals

LOUIS LEVY, <i>et als.</i> , <i>Complainants,</i>	} <i>On Appeal from the Court of Chancery.</i>
<i>vs.</i>	
PASSAIC ARMS, INC., a corpora- tion, <i>et als.</i> , <i>Defendants.</i>	

### BRIEF ON BEHALF OF PRESTON B. SEAMAN AND PHILIP BAER, CLAIMANT-APPELLANTS.

#### Statement of Facts.

The Passaic Arms, Inc. is a New Jersey corporation which had been organized in 1925 by the Claimant-Appellants, Preston B. Seaman and Philip Baer, for the purpose of erecting an apartment house in Passaic, New Jersey, in the neighborhood of Passaic's best residences. Pursuant to said purpose, and in order to finance the construction thereof, an agreement dated May 1, 1926 was entered into between the Passaic Arms, Inc. and the Fidelity Union Trust Company, providing that the latter was to advance to the Passaic Arms, Inc. the sum of \$215,000.00 to be secured by a trust mortgage. Said mortgage was to secure bonds of the Passaic Arms, Inc., which under agreement of June 14, 1926, between the Passaic Arms, Inc. and the Empire Bond & Mortgage Corporation, the latter agreed to underwrite and sell for the Passaic Arms, Inc. Further pursuant to the aforementioned purpose of constructing said apartment house, a construction contract was awarded on May 27, 1926 by the Passaic Arms, Inc. to the General Industrial

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Engineering Corporation, which continued its performance under said construction contract until February 18, 1927, when it abandoned performance of said contract. From that time on the task of supervising and financing the construction of the building was undertaken by the Claimants, Seaman and Baer. However, without any warning or expectation thereof on the part of Claimants a custodial receiver was appointed by the Court of Chancery of New Jersey for the apartment building on March 10, 1927 upon bill filed therefor by Louis Levy, an alleged creditor. The defendant corporation filed its answer denying the allegations made in the bill of complaint and setting forth that:

“complainant is not a creditor of this defendant, that this defendant is not insolvent, and that it has not suspended its business, and that it has sufficient assets and ample credit to pay its just debts and to carry on its business with profit and advantage to itself and its stockholders.”

Several days thereafter the claimant, Seaman, in the presence of Andrew Foulds, Jr., a member of the Bar of this State went to the chambers of Vice-Chancellor Lewis in Paterson, and after a conversation with him Seaman was expressly authorized by the Vice-Chancellor to complete the building. Accordingly Seaman and Baer, with the full knowledge and assent of the receiver and his solicitors, began and continued to finance and supervise the completion of the building until it was finally completed and made tenable by them, and fully rented on October 15, 1927, producing a gross rental in excess of \$3,000.00 per month. The receivership had been made permanent on October 7, 1927. Subsequently, the apartment building and premises, under an order of the Court of Chancery of New Jersey, of

January 7, 1930, were sold to McCarter & English, attorneys acting for an undisclosed principal for the sum of \$50,000.00. According to the receiver's report filed on July 2, 1930 that sum together with other funds amounting to approximately \$2,000.00 are still in the hands of the Receiver.

The claim of Preston B. Seaman and Philip Baer is set forth in a petition filed on their behalf on November 26, 1928 seeking reimbursement for their expenditures from February 26, 1927 to and including October 15, 1927 in the amount of \$12,748.45, and for their services rendered during that time at the total value of \$17,000.00, all of which expenditures were made and services rendered toward the completion of the apartment building, and were claimed to be entitled to priority as an expense of administration. Upon reference of said claim to a Special Master, testimony was taken thereon resulting in a finding by the Special Master:

“that for the labor performed, materials furnished and services rendered prior to the appointment of said custodial receiver, said claimants have valid claims as general creditors of the said Passaic Arms, Inc.; that for the labor performed, materials furnished and services rendered after the appointment of said custodial receiver said claimants have no valid or legal claims, the performance of said labor, furnishing of said materials and the rendering of said services not having been authorized by this Court.”

Exceptions were duly taken to the master's findings, and after argument had thereon, the Master's report was confirmed by the Chancery Court. This appeal is taken from the order of the Chancery Court confirming the Master's report.

**The claim of Seaman and Baer having received the sanction of the Court of Chancery is entitled to priority.**

From the testimony taken before the Special Master and included in the State of Case it is clear and undisputed that from February 18, 1927, the time that the General Industrial Engineering Corporation abandoned its performance of its contract for the construction of the apartment house, the work of completing it was undertaken by the claimants. The building was untenable and not completed at that time and also at the time that the custodial receiver was appointed, on March 10, 1927. Nevertheless, even after the custodial receiver was appointed, with his knowledge and assent, and with the knowledge and assent of his counsel, the claimants, Seaman and Baer continued, at their own expense, the work of completing the building which was finally accomplished on October 15, 1927.

There is no denying that the completion of the building was brought about by the services and expense of Seaman and Baer. The report of the Special Master contains an express finding to that effect. Furthermore, it cannot be doubted that, having continued for a period of approximately eight months, it was performed with the full assent and approval of James J. Murner, Receiver.

The matter disputed, however, is that the completion work performed and expense incurred by the claimants was done under the sanction of the Chancery Court. The Receiver denies merely that such authority was conferred in his presence. However, the testimony of Seaman and of Foulds, a member of the New Jersey Bar, is emphatically

clear upon the point that on the Monday following the appointment of the custodial receiver both Seaman and Foulds visited the chambers of Vice-Chancellor Lewis, who, when the circumstances of the case were explained to him, authorized Seaman and Baer to carry on the completion of the building. The testimony of Seaman as reported before the Special Master relates the aforementioned visit of Foulds and Seaman and the following conversation which then took place:

Vice-Chancellor Lewis to Seaman: "Have you got money enough to complete it (the building)?"

Seaman: Yes, we will get the money to pay the bills as we go along.

Vice-Chancellor Lewis: All right you go and finish the building." (Pages 57 and 58 of State of Case.)

The testimony of Andrew Foulds is to the same effect that during the visit of Foulds and Seaman to Vice-Chancellor Lewis' chambers following the appointment of the custodial receiver, the receiver was then directed by Vice-Chancellor Lewis, to permit Seaman to proceed with the completion of the building. (Pages 163-5 of State of Case.)

Under the above facts the law generally, as well as the law of New Jersey, renders the contract between the claimants and the receiver an expense of administration and hence one that is entitled to priority. The summary rule as to receivership contracts in America is stated as follows by Clark in his treatise on Receivers, Volume I, page 526:

"The rule in America fixing the liability in the case of contracts or engagements of the receivership as gathered from the decisions is as follows: If the Court having

jurisdiction and power with due notice to the parties interested and in a proper hearing gives explicit and direct orders to the Receiver, or gives an undoubted implied power to enter into engagements, and if he does it the Court pledges its faith to carry out those engagements, and the receiver individually is not liable for the failure to perform such a contract."

And further with respect to Receiver's contracts for personal services, Clark expresses the law as follows (Vol. I, p. 595):

"A receiver operating a large business, railroad or public utility necessarily must act through his agents or his employees or servants. Such a receiver when directly authorized by the court may employ such agents, employees or servants, or in some cases his order of appointment may impliedly authorize him to employ such agents, employees or servants. When employing such agents, employees or servants he must necessarily enter into a contract with them, express or implied setting out what this employment is and the compensation thereof. Such contracts should not extend beyond the probable term of the receivership, or in the case of a railway or public utility beyond the customary term of such employment. In such cases the agent, employee, or servant is such of the receiver and not of the debtor company, and the receiver as such becomes liable on such contract of employment."

The above passage, as well as the case of *Vanderbilt v. Central Railroad of New Jersey*, 43 N. J. Equity, page 669, hereinafter mentioned, suggests a further reason for stating that the contract between the Claimants and the receiver was authorized by the Court of Chancery. The order of March 10, 1927 appointing the custodial receiver reads thus:

"And be it further ordered that James J. Murner of the City of Paterson, County of

Passaic, and State of New Jersey, be and is hereby appointed custodial receiver for the creditors and stockholders of the said defendant corporation with all of the powers incident thereto, and that he do and perform all of the duties incident thereto until the further order of the Court \* \* \*

As already stated the building at the time of the above appointment was not yet tenantable and it may be advanced, with some plausibility that the task of completing the building fell within the receiver's incidental power to render the building tenantable. However, whatever weight or significance may be attached to the Vice-Chancellor's order of appointment, it is the Claimants' contention that, as disclosed by the testimony of Seaman and Foulds, set forth above, the completion of the building by the Claimants was expressly authorized by the Vice-Chancellor several days subsequent to the appointment of the custodial receiver.

The Claimants' services and expenses toward the completion of the building having been expressly authorized in advance by the Vice-Chancellor the law of this State makes it an expense of the receivership which is entitled to priority.

In *Lehigh Coal & Navigation Co. v. Central R. R. Co. of N. J.* (35 N. J. Eq. 426, Chan. 1882) two partners of a lumber business had delivered lumber to the receiver of the Central R. R. Co. of N. J. under an alleged agreement with him. Upon the death of the first receiver the partners sought to deliver the balance of the lumber to the second receiver who refused to accept it. The partners therefore filed a petition to compel acceptance of the remaining lumber. The petition was dismissed, the Court stating the law

with regard to receivership contracts as follows (page 430):

“And in my opinion a receiver of a railroad corporation has no authority without the sanction of the Chancellor to make a contract which will bind the trust \* \* \* They (petitioners) must also be assumed to have known that the receiver could make no contract effectual against the trust which was not first authorized or subsequently ratified by the Chancellor.”

In the case of *Vanderbilt v. Central R. R. Co. of New Jersey* (43 N. J. Eq. 669 Court of Errors and Appeals 1887) wherein the same parties were involved as in the foregoing case a new petition was filed by the same partners again seeking to compel the second receiver of the Central R. R. Co. of New Jersey to accept the orders of the first receiver. This renewed petition also brought to the attention of the Court certain broad discretionary powers in the management of the railroad, which the Chancery Court had bestowed upon the first receiver. The Vice-Chancellor with whom the renewed petition was filed denied the relief prayed for therein, but was reversed by the Court of Errors and Appeals, the basis for the reversal being that the broad discretionary powers of the first receiver, which the new petition brought to the attention of the Court, were sufficient to embrace and authorize the contract in question. The views of the court upon the question of a receiver's authority to enter into binding contracts were set forth as follows (pages 683-4):

“On the other hand I cannot find in the legislation in question any countenance for the notion that the contracts of a receiver, made under either the implied or express authority conferred, may be revoked or annulled at pleasure by the Chancellor. Doubt-

less the Chancellor has power to retain in his hands the administration of such a trust, and to personally direct and order each contract into which the receiver should enter. But it would obviously be impracticable to adopt such a course in running a railroad. To select and employ the necessary subordinates to fix the term of service and the amount of wages, to contract for and purchase materials and supplies, and to anticipate in these respects the future needs of one of these gigantic corporations by express orders in each case would require the whole time of the Chancellor, and could never have been intended by this legislation. It must have been contemplated that in the performance of these multifarious duties some degree of discretion might be *accorded to the receiver*. *Whether a power to exercise such discretion would not be assumed to exist in every case without a special order, need not be considered, for it is clear that the Chancellor may accord such discretionary power to a receiver by a general order—such as was made in this cause.* \* \* \*

The liability of a receiver upon such contracts is not personal, but as a representative of the trust. The enforcement of them, or the payment of damages for his non-performance of them, must fall primarily upon the property and fund in the hands of the Court. \* \* \*

*In whichever mode the Court of Chancery is approached, it is obvious that the first question to be determined is whether, if the alleged contracts exist, they are of a character to entitle the party applying to the relief asked. This determination is not to be reached upon the theory that the Chancellor can disregard or annul such contracts at pleasure, but upon equitable principles applied to the management and winding up of an insolvent estate of this peculiar character.*

*If the contract has been completely performed, and its performance accepted by the*

*receiver, and the claim is merely for compensation, relief of that nature would seem necessarily to be awarded, unless the applicant should appear to have dealt fraudulently or collusively with the receiver, to the detriment of the trust. Even if, in the judgment of the Chancellor, the contract was improvident and unreasonable, unless the contractor should appear to have contracted with notice of the improper character of the contract, no just reason could be given for debarring him from the agreed-on compensation, which the receiver might, for his negligence or misconduct, be required to repay to the fund."*

And so it is submitted, on the basis of the foregoing authorities, that Claimants' agreement with the Receiver for the completion of the building, having been expressly authorized by the Chancery Court, said court was required to give effect to it by allowing it priority as an expense of administration, and that in addition to the express authorization by the Vice-Chancellor a further basis for such authorization may be found in the order appointing custodial receiver.

**Assuming that claimants' completion of the building had not been authorized by the Chancery Court it should nevertheless be regarded as an administration expense and given priority accordingly.**

The assumption stated in the foregoing proposition is not an admission of absence of authority by the Chancery Court to the claimants for the completion of the building. Nevertheless, even if the facts were different from what they are and the authority lacking, principles of equity would require that the services rendered and the expenses incurred by the claimants toward the completion of the building after the appointment of

the custodial receiver should be regarded by the court as an administration expense. It is beyond dispute that the premises were not tenantable at the time the custodial receiver was appointed on March 10, 1927, and were only made so by the claimants' services and expenditures toward the completion work which continued thereafter for a period of approximately eight months. It is equitable that such services rendered and expenditures laid out, all with the full knowledge and assent of the receiver and his solicitors which permitted the renting of the premises and added materially to its sale value should rank as an expense of administration.

Authority, as well as principle, supports the above view. In *Tempest v. Ord* (2 Merivale's Reports, 54) a manager and receiver of certain collieries had been appointed to manage, account for and pay what should be received from the produce thereof. On behalf of one Lady Antrim it was moved that the manager should be restrained from proceeding with certain buildings begun to be erected by him and that the receiver should be restrained from paying any money to the manager, the said buildings having been undertaken without the previous consent or direction of the Court. The full text of the Court's opinion reads as follows:

"The Lord Chancellor (Lord Eldon) said that formerly the Court never permitted a receiver to lay out money without a previous order of the Court. *But now where the receiver had laid out money without such previous order it was usual to refer to the master to see if the transaction was beneficial to the parties, and if found to be so the receiver was allowed the money so laid out.*

An order was accordingly made referring it to the master to consider and state to the

court whether the buildings then being erected were fit and necessary, and for the benefit of the several persons interested in the collieries; and after the master should have made his report such further order to be made relating thereto as should appear to be just.”

A similiar rule is laid down in the case of *Brown v. Hazlehurst* (54 Md. 26 Court of Appeals 1880).

There the complainant had exchanged his property for other property consisting of six houses and a hotel. Subsequently he brought suit for rescission on the ground of misrepresentation, and a receiver was appointed pending suit. The order appointing the Receiver gave him no special directions as to his powers or duties, but simply placed him in charge of the property. In the administration of his duties he renewed insurance upon certain property entrusted to his care, paying therefor a premium of \$187.50. The question before the Court was whether or not he was entitled to reimbursement from the estate. His right thereto was denied by the lower court which was reversed by the upper court expressing the law as follows (pages 28 and 29):

“There is no doubt of the general rule, and it is a wholesome one that a receiver will not be permitted to lay out more than a small sum at his own discretion in the preservation or improvement of the property under his charge; but he should in all cases where it is practicable, or the circumstances of the case will permit, before involving the estate in expense, apply to the court for authority for so doing. *But this general rule, however salutary it may be, should not be so rigidly and sternly enforced as to work wrong and injustice, where the receiver has acted in good faith and under such circumstances as will enable the court to see that if previous*

*authority had been applied for, it would have been granted. The justice and right of the matter must depend, to a great extent, upon the special circumstances of each case that may be presented \* \* \** (After a review of authorities the Court continued:) *It then appears that the right of the receiver to have allowance for his expenditures on account of the estate does not always depend upon his having obtained the previous order of the Court, but it may depend upon the circumstances and requirements of the estate."*

At this point the case of *Nessler v. Industrial Land Development Co.* (65 N. J. Eq. 491) (Chan. 1903), may be cited for its bearing on the above point. There the funds in the hands of the receiver were insufficient to pay the receiver's compensation and the other expenses of the receivership. Without first obtaining a court order the receivers had applied the funds in their hands first to the payment of their services and the court held nevertheless that such receivers' fees for their services should rank pro rata with the other expenses of the receivership. The case was heard on exceptions to the receivers' account filed on behalf of persons for debts incurred by the receivers in the custody and management of the estate. With regard to these exceptions the Court said:

"The claims of the exceptants stand on a different basis. These are claims amounting in all to about \$4,200 for debts incurred by the receivers themselves in the custody and management of the property and application is now made for their payment. Such application to this court for the payment of debts incurred by the receiver is proper, and where the debts have been incurred as here without the express order of the court the adjustment of the claims will be made upon a basis which is equitable and just.

\* \* \* Without such order (*i. e.* order allowing receivers to apply assets to the payment for their services) receivers' services in themselves stand on no higher plane than the receivers' debts for the services and advances of other persons for the benefit of the trust, and where, as in this case, the fund in the receivers' hands is not sufficient to pay all the receivers' debts and their compensation, the distribution must be pro rata \* \* \*

*All claims for services rendered to the trust should be paid in full, if possible, as preferred claims and as expenses of the trust, and where the fund in hand is not sufficient to pay in full, the claims should in the absence of special equities be paid pro rata.*"

(Note: The above case was reversed by the Court of Errors and Appeals in 70 N. J. Eq. 804, 64 Atlantic 109 for a clerical error in computing the amounts; the above Atlantic Reporter however reads: "We agree with the conclusions of the Vice-Chancellor," the reason for reversal being only the clerical error.)

It would appear therefore from the authorities above cited that even if the claimants' services and expenditures had not been previously authorized by the Chancery Court, nevertheless equitable principles pronounced by the foregoing authorities would require that their claim should be regarded by the Court as an expense of administration and be given priority accordingly.

The claimants' services and expenditures, having been executed pursuant to agreement with the Receiver, constitute an expense of receivership and as such are entitled to priority.

The above proposition that the expense of administration is entitled to priority even ahead of secured creditors is so clearly established that an extensive review of the supporting authorities is not necessary. Our Court of Errors and Appeals recently dealt with the question in *Seidler v. Branford Restaurant* (97 N. J. Eq. 531), wherein various items of administration expense were held to be prior to the lien of a chattel mortgage, the items of administration expense including (1) receiver's fees, (2) appraisers' fees, (3) fees of auctioneer for conducting sale and (4) rent for use and occupation of premises. The principle of law was declared by the Court as follows (p. 533):

"On the principles of equity themselves such expenses may properly be given preference in distribution. In the nature of things the cost of administration and of just distribution, where the court has jurisdiction, must be placed ahead of the claims of creditors whether secured or unsecured, and so say the text writers."

A case involving an administration expense more nearly resembling the claim in question is that of *Harrison Improvement Co. v. Guardian Trust Co.* (106 N. J. Eq. 445, Chan. 1930), wherein a receiver in insolvency was appointed by the Chancery Court for the Criterion Construction Co. which had as one of its assets a second mortgage upon property of Sixty-Seven South Munn, Inc. The Criterion Construction Co. prior to the appointment of the receiver, had finished a large part of an apartment building for the Sixty-Seven South Munn, Inc. Sub-

sequent to the appointment of the receiver, he undertook to complete the building, and secured, by a first participating interest in the second mortgage, those who, subsequent to the receiver's appointment furnished labor to complete the building. A bill was filed in Chancery by the complainant to establish a first lien upon the second mortgage ahead of the aforementioned first participating interest in the second mortgage. The complainant made his claim by virtue of an assignment of the second mortgage which had been executed prior to the appointment of the Receiver. Nevertheless the Court held that those furnishing labor as aforesaid to complete the building had a lien prior to the complainant, and proceeded to explain the rights of the aforementioned workmen as follows (p. 447):

“The Receiver, of course, took corporate assets subject to all equities, and strictly, as receiver, stands in the shoes of the insolvent company \* \* \* But as an administrative officer of the court he stands in an entirely different footing. His obligation must be paid first and the assignment of the complainant must be subordinated to the first participating interests *primarily because the debts for which they stand as security were incurred in administering the estate under the court's direction.*

Further cases of this State recently decided which illustrate the pre-eminence given to expenses of administration are:

*Banker's Trust Co. v. Maxson* (100 N. J. Eq. 1, Chan. 1926);

*Franklin Lumber Co. v. Harold Anderson, Inc.* (104 N. J. Eq. 306, Chan 1929);

*Ciavatta v. Munn Realty Corporation* (106 N. J. Eq. 21, Chan. 1930);

*Albert & Kernahan, Inc. v. Franklin Arms, Inc.* (107 N. J. Eq. 468, Court of Errors & Appeals 1930).

In conclusion, it is submitted, in short, that the Vice-Chancellor erred in sustaining the finding of the Special Master to the effect that the claim of Seaman and Baer should not be given priority as an expense of administration. The reasons assigned by the claimants why the action of the Vice-Chancellor was erroneous have been advanced together with the authorities in support thereof under the foregoing propositions, namely, that the services having been rendered and expenditures made by the Claimants with the express sanction of the Court of Chancery, and with the knowledge of the Receiver and his solicitors, their claim should have been regarded by the Court as an expense of administration; assuming, but not admitting the absence of such express sanction, the claim of Seaman and Baer should nevertheless, under equitable principles, be regarded as an expense of administration, and that being an expense of administration the conclusion follows that it should be given the rank and priority ordinarily accorded to administration expenses.

STEIN, McGLYNN & HANNOCH,  
Solicitors for Claimant-Appellants.

AARON LASSER,  
Of Counsel.

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# New Jersey Court of Errors and Appeals

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Between  
     LOUIS LEVY, *et als.*,  
                     Complainants,  
     and  
 PASSAIC ARMS, INC., a corpora-  
     tion,  
                     Defendants.

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## BRIEF ON BEHALF OF JAMES J. MURNER, RECEIVER, *et als.*

### Statement of Facts.

In this case, the Court of Chancery confirmed a report made by the Honorable Arthur S. Corbin, one of the Special Masters of the Court of Chancery, to whom this matter was referred by the Honorable Vice Chancellor, Vivian M. Lewis. Exceptions were taken to the report of the Special Master and were duly argued before the Vice Chancellor by Aaron Lasser, Esq., counsel for Messrs. Seaman and Baer and Henry C. Whitehead, Esq., Louis Platt, Esq., and Joseph J. Weinberger, Esq., of counsel for the receiver and lien claimants.

Vice Chancellor Lewis after several lengthy oral arguments and after having read the testimony taken and returned with the Special Master's report and being fully cognizant of all the facts, overruled each of the six exceptions filed by Messrs. Seaman and Baer and confirmed Special Master Arthur S. Corbin's report in its entirety.

A brief history of this corporation is necessary for a complete understanding of this appeal: Passaic Arms, Inc., was incorporated in 1926, with three stockholders, who were Mr. Preston B. Seaman, an architect, Mr. Baer and his wife. They invested Six Thousand (\$6,000.00) Dollars in addition to the value of the land. Their object was to build an apartment house. Thereafter the said Passaic Arms, Inc., who were adjudged insolvent by the Court of Chancery, entered into alleged contracts with the General Industrial Engineering Company, a corporation, for the erection of an apartment house in the City of Passaic. They had no other assets. The alleged contracts for the erection of this building were never filed.

Thereafter the General Industrial Engineering Company, a corporation, abandoned the erection of this building, namely February 18th, 1927. From February 18th, 1927, down to the filing of a bill, namely March 10th, 1927, Passaic Arms, Inc., continued to complete the building. A bill was filed March 10th, 1927, praying for the appointment of a receiver, and on March 10th, 1927, James J. Murner was appointed custodial receiver. By the order appointing James J. Murner, custodial receiver, the officers, agents and the corporation were enjoined from exercising the privileges of the corporation until the further order of the Court. This order was never modified by any order of the Court, on file in the Court of Chancery.

After the appointment of Mr. Murner as custodial receiver on March 10th, 1927, Mr. Seaman, the President and his then solicitor, Mr. Foulds, claimed that they appeared before Vice Chancellor Lewis at the Chancery Chambers in Paterson and secured either inferentially or directly, authorization to complete the building. This is vehemently denied by Mr. Murner, who obviously is cor-

roborated by the Honorable Vice Chancellor Vivian M. Lewis, in that no order was made vacating the injunction and no order was entered ordering them to complete the building, and in confirming the Special Master's report, the Vice Chancellor clearly manifested his disapproval of any such claims.

On October 10th, 1927, Mr. James J. Murner was appointed permanent receiver. In the meantime from the date of the appointment of custodial receiver down to the time of the appointment of the permanent receiver, lien claims aggregating some \$79,199.69, were filed by various lien claim creditors.

On November 26th, 1928, Mr. Seaman, President and Mr. Baer, Secretary of the defunct corporation, filed a petition and affidavit, asking to be given preference for the sum of \$29,748.34 over all lien claimants. The petition in its entirety is set forth on pages 20 and 21 of the incompleated state of the case. In the petition they allege that they made certain payments from the 26th day of February, 1927, down to October 7th, 1927, amounting to \$12,758.45 by authority of the Court. In addition, a claim was filed by Mr. Seaman, the President for \$17,000.00, for alleged architectural services at the rate of \$500.00 per week, for thirty-four weeks.

Mr. James J. Murner, the receiver in his testimony, testified that he never assented and never spoke to Messrs. Seaman and Baer or Mr. Foulds, their then solicitor, concerning the completion of the building, and on the contrary he produced Mr. John Paul Gibson, who was the original agent engaged by the Passaic Arms, Inc., before the receiver was appointed, and he testified to the effect that the claims of Messrs. Seaman and Baer were fictitious, because he engaged the help and spent the money collected from rents towards the comple-

tion of the building. He further produced receipts and vouchers and his account, to corroborate his statement that all of the work was done under his supervision, and that he paid for the same as the work progressed. All of his testimony was in direct contradiction to Messrs. Seaman and Baer, who the testimony will show, not only padded their alleged claims but inserted items which Mr. Gibson produced checks for and which were paid for by the corporation's funds and not their individual moneys. When confronted with these checks Messrs. Seaman and Baer both admitted that the same was untrue and each blamed the other. These attempted corrections were made even though they had presented a petition and affidavit to the Court of Chancery to the contrary.

In addition a claim was filed by Mr. Seaman for \$17,000.00 for alleged architectural services, commencing February 18th, 1927, or approximately three weeks before the appointment of a custodial receiver and ending October 7th, 1927, for a period while the receiver was in control. There is not one scintilla of evidence in this case to show that any word was ever mentioned by Vice Chancellor Lewis, Mr. James J. Murner, the receiver or his counsel, that an authorization had been given or that a demand would be made for \$17,000.00 or any sum, for architectural services, at the rate of \$500.00 per week, for thirty-four weeks, and we call the Court's specific attention to think of it, that on an alleged claim for supervising \$12,000.00 worth of unfinished work, that the president should file a petition and make a demand as a preference of \$17,000.00 for architectural services when Mr. Seaman who makes this claim was the president of this company, and did not even testify that any one even suggested that he should super-

wise the work and that he would be paid at the rate of \$500.00 a week, or paid anything in fact. The testimony is clear from the lips of Mr. Seaman himself, at page 84, of the incompleated state of case, that the claim of \$17,000.00 for architecture is an unjust demand and unauthorized in view of his testimony in response to a question directed to him by his own solicitor, as follows:

“Q. Are you seeking compensation here in accordance with the resolution of the Passaic Arms S & B Exhibit 1? A. Yes, I am.”  
(State of the Case, page 84).

There is further abundant testimony in the case, that no one did any work from the date March 10, 1927 with the exception of men employed by Mr. Gibson, for which they were paid out of rent moneys.

We maintain therefore, that the points raised by counsel for appellants in their brief, are without merit, and although grouped under three points, can be answered by us in one.

### POINT I.

**The claims of Messrs. Seaman and Baer were never authorized by the Court of Chancery or the Receiver either directly or inferentially and therefore should not be entitled to any priority.**

At the outset, permit us to call the Court's attention to several glaring inaccurate statements, which appear in counsel for the appellants' brief. On page four the following statement appears: “Nevertheless, even after the custodial receiver was appointed, with his knowledge and assent of his counsel, the claimants, Seaman and Baer con-

tinued, at their expense, the work of completing the building which was finally accomplished on October 15th, 1927." This statement is denied vehemently in the testimony by the receiver, Mr. James J. Murner, and we desire to quote directly from his testimony which can be found on pages 245-246 of the incompleated State of Case:

"By Mr. Platt:

Q. Was there anything said in your presence by the Vice-Chancellor with reference to Mr. Seaman and Mr. Baer completing the building? A. No.

Q. Was there any direction given to you by the Vice-Chancellor during this conversation at that time that you were to permit or directing you to permit—the completion of the building by Seaman and Baer? A. No.

Q. Was there anything else said by the Vice Chancellor to you or by you to the Vice Chancellor during that particular time? A. No.

Q. Other than what you have recited? A. Except the conversation at the building on Saturday.

Q. Was there any other conversation when you were in the presence of the Vice-Chancellor and Mr. Seaman and Mr. Foulds, if you can remember? A. That I don't remember.

Q. Do you remember any conversation in the presence of Mr. Foulds and Mr. Seaman and yourself and the Vice-Chancellor at any time with reference to the completion of the building by Seaman and Baer or either one of them? A. No.

Q. Do you remember that any such conversation ever took place? A. No. I have already testified that no conversation took place within my hearing where anything was said with reference to the completion of the building by Seaman and Baer."

Counsel for the appellants further make other inaccurate statements under Point One of their brief at page four, as follows: "There is no denying that the completion of the building was brought about by the services and expense of Seaman and Baer." This is also vehemently denied by the testimony of the receiver, Mr. James J. Murner. We quote from the testimony of Mr. Murner at pages 248 and 249 of the incompleting state of case:

"Q. You were perfectly satisfied to have Seaman and Baer go ahead and complete the building at their expense, weren't you? A. I was not. I didn't feel it was a matter of my concern.

Q. Why didn't you think it was any concern of yours although you were custodial receiver? A. I didn't know I had any authority to complete the building or order anybody or authorize or acquiesce in anybody's completing it.

Q. You knew there was an injunction in the order appointing you custodial receiver which prevented the Passaic Arms, Inc., as a corporation from doing anything, didn't you? A. I did.

Q. Why did you let the Passaic Arms, Inc. or any of the officers or directors do anything on that building after March 10, 1927? A. I didn't know they had done anything.

Q. So, in other words, you purposely stayed away and left that building by itself? A. I didn't say I did.

Q. What did you do? A. I visited the building on several occasions.

Q. All right. When? A. Subsequent; with reference to the period from March 10 to October 7th?

Q. Yes. That is what we are talking about. A. Several times.

Q. When? A. The day following—the Saturday following my appointment is the first

I recall having been there, and there wasn't a week between then and October that I didn't go down there at least two or three times and just look the place over.

Q. And you found that the building was being completed, didn't you, on those days? A. There was nothing that was being done that I could observe that was being done to complete the building during those visits.

Q. When were those visits? A. Between March 10th and October—

Q. I ask you for better specification of the dates than that? A. I have given it to you. Weekly at least two or three times every week during that period.

Q. Did you ever see Mr. Gibson on the job? A. I did not.

Q. You heard the testimony of Mr. Gibson this morning about his being there all times practically every day during this period from March 10th to October 1st. You can state of your own personal knowledge that you never saw him there? A. I didn't hear him testify in the first place, this morning, and when I would visit the building it would be in the evening or Saturday afternoon and on some Sundays I recall, but during the times I was there in the evenings or on Saturday afternoon or on Sunday I never recall having met Mr. Gibson at the building."

Another inaccurate statement is made by counsel for the appellants on page four of their brief that "There is no denying that the completion of the building was brought about by the services and expenses of Seaman and Baer. The report of the Special Master contains an express finding to that effect." This is not the fact. A reading of the findings of the Special Master, Arthur S. Corbin, which is herewith quoted in full leaves no question that this is untrue. We quote the Special Master,

Arthur S. Corbin's report in full: (Incompleted State of Case, pp. 41-44)

"In pursuance of an order made in the above entitled cause on the 21st day of February, 1930, whereby it was referred to the undersigned, one of the Special Masters of this Court, to take testimony with reference to the claims of Messrs, Seaman & Baer, herein, and to report to this Court my findings as to the validity of said claims, the amount of money to be awarded, if any, to said claimants, and also to report on the priority of said claims.

I do respectfully report that I have been attended by William L. Bowman, Esq., solicitor for Preston B. Seaman and Philip Baer, Joseph J. Weinberger, Esq. of the firm of Weinberger & Weinberger, Esqs., and Louis J. Platt, Esq., for James J. Murner, Receiver for General Industrial Engineering Company, Henry C. Whitehead, Esq., solicitor for Campbell, Morrell & Co. and Nicholas O. Beery, Esq. solicitor for National Electric Co., and in their presence have examined into matters referred to me, and

I do further report that on March 10th, 1927, James J. Murner was appointed Custodial Receiver for the said Passaic Arms, Inc., that said claimants were notified of the making of said order and the appointment of said Receiver within a day or two after March 10th, 1927; that said James J. Murner was appointed permanent Receiver on October 7th, 1927; that said claimants both before and after the appointment of said custodial receiver and said permanent receiver, caused labor to be performed and materials to be furnished for, in and about the completion of the building known as Passaic Arms, Inc., at No. 455 Passaic Avenue, in the City of Passaic, New Jersey and rendered services in the supervision of said work; that for labor performed, material furnished and ser-

vices rendered prior to the appointment of said custodial receiver, said claimants have valid claims as general creditors of said Passaic Arms, Inc.; that for labor performed, materials furnished and services rendered after the appointment of said custodial receiver, said claimants have no valid or legal claims, the performance of said labor, furnishing of said materials and the rendering of said services, not having been authorized by this Court.

I further find and report that from the evidence produced before me the said claims of Messrs. Seaman and Baer are valid claims as general creditors of the said Passaic Arms, Inc., for the sum of \$1,584.54; that said claimants are not entitled to priority or preference over the claims of other general creditors of the said Passaic Arms, Inc., there appearing in the testimony produced before me no legal or equitable basis for priority or preference with respect to the said claims of Messrs. Seaman and Baer.

All of which is respectfully submitted this 29th day of May, 1930.

(Signed) ARTHUR S. CORBIN,  
Special Master in Chancery.

With these inaccurate statements out of the brief, there remains for the Court's consideration, the following questions for this Honorable Court's determination:

a. Did Vice Chancellor Lewis authorize either directly or inferentially the receiver, Mr. James J. Murner, or Mr. Seaman or Mr. Foulds, his solicitor to go ahead and permit Seaman and Baer to complete the building?

b. Was the Special Master's report in accordance with law and the facts?

In this brief, we have quoted excerpts of the testi-

mony by Mr. Murner, which clearly shows that he never either directly or inferentially ever gave an order or consented to Messrs. Seaman and Baer doing any work in the completion of this building. This testimony heretofore quoted can be found in the incompleated state of case, page 245, 246 and 248. His entire testimony can be found in the incompleated state of case commencing page 243 and running thence to page 260.

In addition to Mr. Murner's testimony, there was no order of the Court of Chancery on file. The Court of Chancery effects its decrees, orders, authorizations, and sanctions by written orders advised by Vice Chancellors or Advisory Masters, and signed by the Chancellor. Chancery Rule 175 is as follows:

"No order shall be filed by the Clerk until it is actually signed, and none shall be filed *nunc pro tunc* unless specially directed by the Court; and all proceedings under an order not actually signed shall be null and void."

Mr. Seaman and his then solicitor, Mr. Foulds, claim that they visited the Vice Chancellor a few days after the appointment of the custodial receiver and fixed the time at either March 12, 13th, or 14th, 1927, Mr. Foulds, the solicitor for Mr. Seaman and the then solicitor of Passaic Arms, Inc., on direct-examination testified as follows: (Page 164-165 of incompleated state of case)

"Q. Well, was there any conversation before he sent for Mr. Murner? A. Well, I told him that I felt that the order was improvidently granted and that he had not been informed of the facts.

Q. What did you say respecting the facts? A. I said that the building was, as I understood it, in such condition that it could be

finished within a very short time, but we were just on the eve of completing the enterprise when the Receiver had come in and injured the front door, in fact, had closed the building where there were some workmen in it, and if we were let alone for a short time we could finish the building and have it a going project.

Q. Go ahead. A. The Vice Chancellor sent down for Mr. Murner, or we got him in some way. He came up there and the Vice Chancellor asked him about this injury to the door, and so forth, and he denied that he had done any unnecessary injury—denied, I think, that there were any workmen in the building at the time so far as he knew, and the Vice Chancellor said that it probably would be better for all parties if the building could be completed, or something like that, and I introduced Mr. Seaman as the architect and one of the parties in interest, and he said that he was willing to go ahead and finish the building, and I don't know in just what—what words were used, but as I entered in my book, the Receiver was directed to permit Seaman to proceed with the completing of the building. That is my book entry. I believe the Vice Chancellor said that we could apply on short notice to vacate the order. I told him, however, if we were going to finish the building, it would be better to continue the order, and it was continued until the Fall, I believe from week to week."

We desire to call the Court's attention at this point to the testimony of Mr. Murner, who categorically denies the statements of Mr. Foulds and Mr. Seaman.

On further direct-examination by Mr. Bowman, solicitor for Messrs. Seaman and Baer, Mr. Foulds testified, when asked the following question, found on page 168 of the incompleated state of case:

“Q. What did the Vice Chancellor say to Mr. Seaman? A. It was more in the nature of inquiring as to what work was to be done or something of that nature. I didn't feel that I was applying for directions to Mr. Seaman—

Q. Well, I am just asking you— A. Mr. Seaman was there as the architect of the building and we were complaining because the custodial was doing something which we wanted to prevent. We weren't getting instructions as to what we should do; we were getting instructions as to what the Receiver should do.”

When questioned by the Special Master, Mr. Corbin, their solicitor, Mr. Foulds testified as follows: (State of Case, p. 172)

“Q. Do you recall anything more than you have testified to concerning what the Vice Chancellor said? Merely generally that Mr. Seaman and myself felt that he could complete—

He was also asked the following question, to which he replied as follows: (State of Case, p. 172)

“Q. I say, do you remember anything more about what he said? A. I can't attempt to give the conversation.”

Clearly what was in Mr. Seaman's and Mr. Fould's mind is evidenced by Mr. Fould's testimony on cross-examination by Mr. Whitehead, found on pages 177-178 of the state of case:

“Q. And that was the thought in your mind when you went up there; it was a matter of protest against the custodial receiver as an improvident appointment, wasn't it? A. Yes.

Q. And it is a fact, isn't it, that you un-

derstood from Mr. Seaman that the building was practically done at the time? A. Yes.

Q. And that if the comparatively small amount of work necessary for completion was performed, then his obligations could be straightened out, and the whole thing made a success? A. I don't like the words "practically complete".

Q. Not practically, but if the comparatively small amount of work necessary to complete it was done, then the whole operation could be straightened out and made a success? A. Yes; I felt it as feasible to complete the building in a short time.

Q. And you felt it was not only feasible but also that it was desirable from Mr. Seaman's standpoint, or the owner's standpoint, that the building should be completed, didn't you? A. Yes, sir.

Q. Isn't it true that both you and Seaman rather impressed that view on the Vice Chancellor? A. We tried to.

Q. You tried to make it plain to him that if the owners could finish up this work, that why, then the matter of the lien claims and other difficulties could be straightened out and that this operation could be kept going in a successful fashion? A. Sure."

The testimony of Mr. Foulds and Mr. Baer is to the effect that they felt there was no necessity for a receiver, and that the building was so nearly completed that if they could have the building completed, it would be in a tenable condition, income would be derived from rents and their obligations could be met. (State of Case, pp. 177-179) Mr. Baer testifies that all along they thought that the building would be turned back to them and that the matters at issue would be settled (State of Case, pp. 158-160), and it was this thought which prompted Seaman and Mr. Foulds to visit the Vice Chancellor and to try to impress these things

upon him. The Court's attention is particularly directed to the testimony of Mr. Seaman on direct-examination when asked this question by his own solicitor: (State of Case, p. 59)

"Q. What was the conversation respecting the completion of the building? A. That the Passaic Arms was going on to complete the building at their own expense."

But Mr. Foulds further testifies that the Vice Chancellor said that he could apply on short notice to vacate the order. (State of Case, pp. 164-165). This application was not made and the order appointing a custodial receiver and restraining the defendants, remained in full force and effect until October 7th, 1927, when the appointment of the receiver was made permanent.

Seaman and Baer throughout this period acted with the advise of their counsel. Their interest was to have the building completed, and as the controlling stockholders of the defendant company, and virtually as owners of the building, they proceeded to do some work in the building to make it tenantable. This work, however, was not done by authorization of the Vice Chancellor or the receiver, as is evidenced by the fact that the report of the Special Master (State of Case, p. 42) in which he says:

"Claimants have no valid or legal claims, the performance of said labor, furnishing of said materials and the rendering of said services, not having been authorized by this Court."

was confirmed by the order of May 11th, 1931, advised by the same Vice Chancellor. The Vice Chancellor thus impliedly denies that he authorized the claimants to complete the building.

Attention is directed particularly to the testimony of the receiver, Mr. Murner (State of Case, p. 257) in which it appears that several applications were made to the Court for the payment of bills for coal and painting, and that the Court in each case asked the receiver if he authorized the incurring of the bills, and that the receiver answered "No," whereupon the Court refused to sign orders to pay the bills. This is clear indication that the Court did not at any time authorize the claimants to incur any bills for the completion of the building, and that the Vice Chancellor intended that any such bills should be incurred or authorized by the Receiver before they should be chargeable to the estate.

b. Was the Special Master's report in accordance with law and the facts?

We maintain that the proof is overwhelming and conclusive that the Special Master was correct in his findings, that the only sum which Messrs. Seaman and Baer were entitled to was the sum of \$1584.54, and only as general creditors, because in his report he specifically finds: (State of Case, p. 42).

"That for labor performed, materials furnished and services rendered, prior to the appointment of said Custodial Receiver, said claimants have valid claims as general creditors of said Passaic Arms, Inc."

And he further reports:

"That from the evidence produced before me, said claims of Messrs. Seaman and Baer are valid claims as general creditors of said Passaic Arms, Inc. in the sum of \$1584.54."

From the testimony of Seaman and Baer, the Spe-

cial Master found as a fact that between February 18, 1927 and March 10, 1927 claimants had expended the total sum of \$1584.54 for labor performed, materials furnished and services rendered, and that this sum represented the total supported by vouchers or receipts submitted in evidence by the claimants for that period. For that sum, claimants are general creditors. They were officers and directors of the Company and any sums which they advanced for the uses of the Company, before the appointment of the Custodial Receiver, were advanced as general creditors and they had the same status as any other creditors who furnished labor or materials, or rendered services, and who did not convert their general claim to a special or preferred claim by the filing of a mechanic's lien and taking the steps provided by statute in such case, or by the entering of judgment.

Claimants, Seaman and Baer had notice of the appointment of the receiver, and they testified that they proceeded to furnish some labor and material after said notice, but we maintain was without authorization or order from the Court or the receiver. The incompleated state of case shows that no claim was filed with the receiver and they took no steps to vacate the order of March 10th, 1927, appointing a custodial receiver, and did nothing to protect the job, because they thought, as was testified by Mr. Baer, that the property would be turned back to them and the matter straightened out. As Mr. Baer testified, "It was a great shock to myself and both of us, when the permanent receiver was appointed. (State of Case, p. 159).

They did nothing to perfect their alleged claim until November 26th, 1928, when they filed a petition and affidavit in the Court of Chancery claiming a preference for \$29,748.45. Seaman testified

that they did not file a claim or mechanic's lien or take any steps to protect this alleged claim until November 26th, 1928, because somebody advised them not to and because they thought the property was coming back to Passaic Arms, Inc. (State of Case, pp. 128-129). Baer testified that their attorneys advised them not to file a claim. (State of Case, p. 161). When their petition was presented to the Court, their claim was out of time as a mechanic's lien claim, and they did not bring on a hearing on the order to show cause of November 26th, 1928 until approximately one year later when an offer of \$50,000.00 over and above the mortgages and taxes to the receiver for the premises was under consideration by the Court.

In their claim was included the claim of \$17,000.00 for 34 weeks at \$500.00, alleged salary due to Seaman as architect and supervisor, although he had agreed with the Passaic Arms, Inc., in 1925 to accept \$25,000.00 for his services as such and was living in a \$100.00 a month apartment, rent free as part of his compensation. (State of Case, p. 87-92).

Of the balance of \$12,748.45 claimed, neither Seaman nor Baer produced receipts, vouchers or other evidence of payments. Their records were mere self serving memoranda in note books of alleged cash payments, and a few checks submitted by Seaman for small amounts ranging from \$8.00 to \$30.00, were checks cashed by local tradesmen, with whom Mrs. Seaman traded for their household necessities. A small sum was shown to have been paid by them for the alleged work. On the other hand, John Paul Gibson, who was the renting agent and who was engaged by the Passaic Arms, Inc., prior to the appointment of a receiver, testified and produced receipts, cancelled vouchers

to substantiate his testimony, that he paid for the labor and materials for which Seaman and Baer claim to have paid. Gibson testified that there was no work done except that ordered and paid for by him. We quote herewith excerpts from Mr. Gibson's testimony, which we think are important for the Court's consideration. (State of Case, pp. 207, 208, 214).

“Q. From March 8th, 1927 down to September 30, 1927, was there any work done by anybody except by persons that you paid?

A. Carpenters?

Q. Yes. A. From March 10th?

Q. From March 10th. A. Yes, that is the only two carpenters who were in the building.

Q. You were there daily? A. Yes, sir.

Q. And you paid them for all the work they did?

Mr. Bowman: I object to that. How does he know whether he paid them for all the work they did?

Q. Did you pay them? A. With two exceptions in the beginning. Of course, Mr. Baer produced a couple of checks which he paid because I didn't have enough money to pay them.

Q. Now, Mr. Gibson, you have testified with the exception of the few instances which Mr. Baer produced checks for or Mr. Seaman produced checks for, that you paid out all of the material men and all the laborers the money which was due and owing to them for work done on the building? A. During my time?

Q. During your time, and your time was from March 8th, 1927 to September 30, 1927?

A. That is right.

Q. Was there ever any work performed on Sundays while you were there? A. No. (State of Case, p. 209)

By Mr. Weinberger: (State of Case, p. 214)

Q. I show you the following and ask you whether you paid these bills out of the rents which you collected from the tenants of the Passaic Arms and on what property the work represented by the bills was done and performed: William Raisin, \$2,050; H. W. Mills & Company, \$28.50; Reliable Furniture Company, \$40; Public Service Electric and Gas Company, \$347.67; National Electric Company, \$70.91; "Examined and found correction, Preston B. Seaman." A. R. Barton, \$3; Ice by Wire Corporation, \$70; Campbell, Morrell & Company, \$55; Slaff and Ostuw Coal Company, \$126; Passaic-Bergen Lumber Company \$381.40; John Kleinhammer, \$216.81, June 22nd to July 23rd; Allen D. Seaman, \$30; Denman Towers, twenty cents; William A. O'Brien, \$53.75; John J. O'Leary Company, \$187.45; Manhattan Rubber Manufacturing Company, \$81.70; W. J. Rider, \$101.20, August 2, 1927; John Kleinhammer, \$41.81, paid August 2, 1927; Samuel Smith & Sons, \$21.83; W. J. Rider, April 22, 1927, \$63, for wages for Saturday to Friday preceding; John Kleinhammer, \$38.25, paid April 22nd, 1927, for Friday to Thursday preceding; W. J. Rider, \$36.20 for lumber cement and sandpaper; Joseph Kovalycsik, paid October 1, 1927, \$124, work repairing garage.

Now all these bills which have just been read off to you, you paid out? A. Yes.

Q. From the rents collected by you from the Passaic Arms, Inc.? A. Yes.

Q. Did Seaman or Baer give you any money toward this? A. No.

Mr. Weinberger: I offer them all as one exhibit."

With the testimony presented before him, after having observed the witnesses and weighing their credibility, and studying the exhibits submitted to

him, it was proper for the Special Master to find as a fact and report to the Court that for the furnishing of labor and materials and services rendered after the appointment of the Custodial Receiver, the claimants had no valid or legal claim. Vice Chancellor Lewis, after having listened to extensive argument, after having studied the testimony and reviewed the exhibits, and being fully cognizant of the history of this case from the beginning, came to the same conclusion, and rightfully confirmed his report in its entirety.

Counsel for the appellants have cited certain law concerning the elementary principles of receivership and administration expenses and receiver's liabilities. This law has no applicability to this case, because the work done was not authorized, either by the Court of Chancery or by the receiver, directly or inferentially. The Court of Errors and Appeals has repeatedly held that:

“On appeal from a decree of the Court of Chancery, great weight is given to a finding upon a question of fact, because the Chancellor, who hears the case in the court below and sees the witnesses and hears them testify has better opportunities to judge their credibility than the reviewing court.” Citing *Cartan, et al. v. Phelps et al*, 91 Eq. 312.

In conclusion, we respectfully submit that the order of Vice Chancellor Lewis in sustaining the findings of Honorable Arthur S. Corbin, Special Master, to the effect that Seaman and Baer should not be given any priority was correct. The testimony of the receiver and of Mr. John Paul Gibson, agent of the Passaic Arms, Inc., together with the exhibits, checks, documents, vouchers of Mr. Gibson, together with several damaging statements heretofore made by Seaman, Baer and Mr.

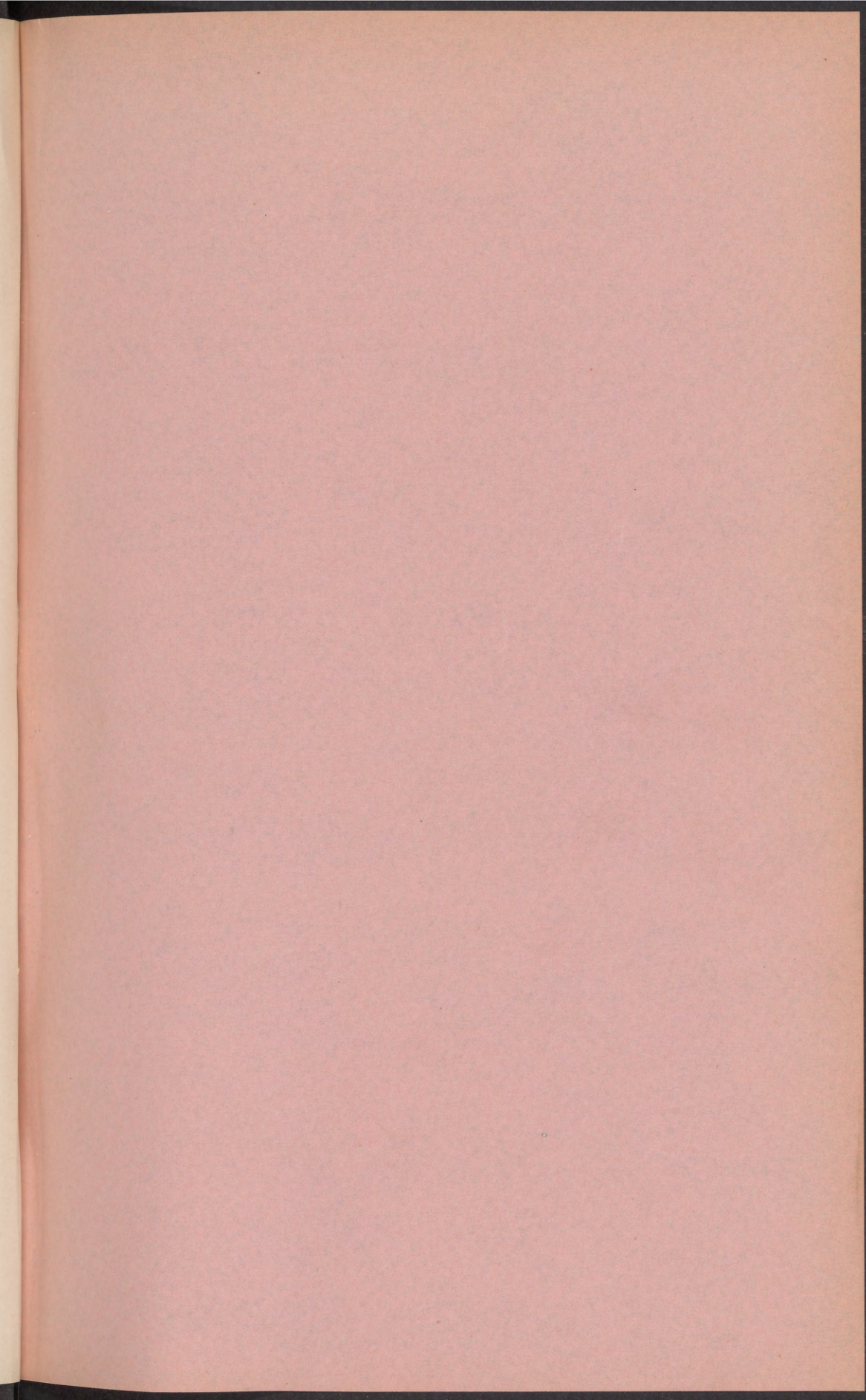
Foulds, clearly show that the Vice Chancellor was correct, and that Seaman and Baer are not entitled to any priority.

**For the reasons heretofore mentioned, we respectfully urge that the appeal be dismissed and that the order of Vice Chancellor Lewis be confirmed in its entirety.**

Respectfully submitted,

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Of Counsel.



Should clearly show that the Vice Chancellor was correct, and that Seaman and Hays are not entitled to any priority.

For the reasons heretofore mentioned, we respectfully urge that the appeal be dismissed and that the order of Vice Chancellor Lewis be confirmed in its entirety.

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