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**WRIT OF CERTIORARI.**

Filed August 22, 1930.

NEW JERSEY, ss.

The State of New Jersey to The  
First District Court of Jersey City,  
(SEAL) Hudson County, and AUGUST ZIEGENER, 10  
Judge of said Court: GREETING: We,  
being willing for certain reasons to be  
certified of and according and concerning a  
certain accusation in writing, plea, trial and  
judgment of conviction and order lately made,  
pleaded and had before and by you, in a cause  
now pending in your court, wherein Joseph L.  
Cunningham is plaintiff, and William Berkowitz,  
is defendant, and which said order is dated July  
15, 1930, as is said, 20

Do COMMAND YOU that the said accusation in  
writing, plea, trial, judgment of conviction and  
order aforesaid, with all things touching and con-  
cerning the same, together with this writ, by  
whatsoever the defendant aforesaid may be  
called in said proceedings, you do distinctly and  
openly send under your hand and seal to our  
Justices of our Supreme Court of Judicature,  
at Trenton, on the 23rd day of August, 1930, and  
that our Justices may cause to be done there- 30  
upon what of right and according to the laws of  
this state should be done.

WITNESS, HON. WILLIAM S. GUMMERE, Chief  
Justice of our said court this 4th day of August,  
nineteen hundred and thirty.

FRED L. BLOODGOOD,  
Clerk.

The within writ is allowed this 4th day of  
August, 1930. Let it be sealed.

LUTHER A. CAMPBELL, 40  
Justice.

RETURN TO WRIT OF CERTIORARI.  
NEW JERSEY SUPREME COURT.

No. 184477

10	<p>WILLIAM BERKOWITZ, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE FIRST DISTRICT COURT OF JERSEY CITY, AUGUST ZIEGENER, Judge of said Court, <i>Defendants.</i></p>	<p><i>On Certiorari.</i></p> <p><i>Return to</i> <i>Writ of</i> <i>Certiorari.</i></p>
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20 *To the Honorable, The Chief Justice and Associate Justices of the New Jersey Supreme Court:*

The judgment, order and proceedings herein, with all things touching and concerning the same as fully and entirely as they remain on file in the First District Court of the City of Jersey City, I do hereby certify under the seal of the court in the schedule hereto annexed, as within I am commanded.

30  
AUGUST ZIEGENER,  
Judge of the First District  
Court of Jersey City.

Attested this August 22, 1930,

B. FRANCES MARRON,  
(SEAL) Clerk.

40

TRANSCRIPT OF CLERK'S DOCKET.

FIRST DISTRICT COURT OF JERSEY CITY.

No. 184477

JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div> 1208 Summit Ave.	}	<i>Upon Con- tract.</i>  <i>Demand \$500.00.</i>	10
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STATE OF NEW JERSEY, HUDSON COUNTY, CITY OF JERSEY CITY.	}	<i>ss.</i>	20
----------------------------------------------------------------	---	------------	----

Before August Ziegener, Esq., Judge.  
 McCarthy & McTague, plaintiff's attorneys.  
 .....Defendant's attorney.

Costs	City	Al.	
Summons Copy .....	1.50	.60	
Service and return ...		.60	
Mileage .....		.20	
Order, etc .....			30
Venire .....			
Summoning Jury ....			
Attending Jury .....			
Subpoenas .....			
Service of subpoenas .			
Witness fees .....			
Jury fee .....			
Trial fee .....	1.50		

*Transcript of Clerk's Docket.*

	\$15.81		
	Atty. allow. ....		
	Execution .. .. .	.60	.75
	Service and return ..		
	Mileage .....		
10	Transcript of judgment & proceedings, order etc. ....	1.00	
	Garnishee ex. ....	.70	1.00
	Order .....	1.00	
	“ .....	1.00	
	“ .....	1.00	
	“ .....	1.00	

20 A summons was issued tested October 1, A. D. 1929 returnable October 17, A. D. 1929 at 10 o'clock in the forenoon at the court room of said court in the City of Jersey City. The constable returned the summons as follows, viz: I served the within summons October 11, 1929 on William Berkowitz, the defendant by reading the same to him and delivering to him a copy thereof. Plaintiff demand was filed October 1, A. D. 1929. October 31, A. D. 1929, the plaintiff appearing and the defendant not appearing and the trial of the cause was proceeded with as follows: 30 December 7, 1929, on the part of the plaintiff, affidavit of Joseph L. Cunningham presented to the Court and filed.

Whereupon it is on this seventh day of December A. D. 1929, by this court considered and adjudged that said Joseph L. Cunningham plaintiff recover against said William Berkowitz, defendant the sum of three hundred sixteen dollars and thirty cents debt and nineteen dollars and sixty-one cents cost of suit.

*Transcript of Clerk's Docket.*

December 7, A. D. 1929, execution was issued to Robert Schenker, Constable who returned the said execution as follows, viz: I return the within writ the 17th December, A. D. 1929 unsatisfied, December 19, 1929 garnishee execution issued to Robert Schenker, Constable.

March 25, 1930 rule to show cause, returnable April 3, 1930 Adj. May 1. **10**

May 5, 1930 petition and order for discovery filed.

May 20, 1930 petition and order filed.

June 5, 1930 order that defendant pay plaintiff \$30.00 each week filed.

July 15, 1930 order that defendant pay plaintiff \$30.00 each week filed.

August 5, 1930 writ of certiorari served on Court. **20**

(Certified a true copy of original filed in the First District Court of Jersey City, N. J.

B. FRANCES MARRON,  
Clerk.)

**30**

**40**

**SUMMONS.**

HUDSON COUNTY,  
 THE STATE OF NEW JERSEY. } ss.

10                    To any constable of said county, or  
                       to the Sergeant-at-Arms of the First  
 (SEAL) District Court of Jersey City SUM-  
                       MON William Berkowitz to appear  
                       before the First District Court of  
 Jersey City to be held at No. 20 York street,  
 Jersey City in said City on the 17th day of  
 October, 1929 at ten o'clock in the forenoon, to  
 answer unto Joseph L. Cunningham in an action  
 on contract wherein the plaintiff demands from  
 the defendant five hundred dollars. Hereof fail  
 not.

20                    WITNESS, August Ziegner, Esq., Judge of  
 said Court, at Jersey City aforesaid, the 7th  
 day of October in the year One Thousand Nine  
 Hundred and Twenty-nine.

B. FRANCES MARRON,  
 Clerk.

30

40

**STATE OF DEMAND.**

Filed October 1, 1929.

**FIRST DISTRICT COURT OF JERSEY CITY.**

JOSEPH L. CUNNINGHAM,

*Plaintiff,**vs.*WILLIAM BERKOWITZ, c/o Lacka-  
wanna Laundry Co., 1208  
Summit avenue, Jersey City,  
N. J.*Defendant.*

10

*Action on  
Contract.**State of  
Demand.*

Plaintiff demands of the defendant the sum of  
 five hundred dollars for that whereas the said  
 defendant on the 21st day of January in the  
 year of our Lord One Thousand Nine Hundred  
 and Twenty-nine in the County of Essex is in-  
 debted to the plaintiff in the sum of three hun-  
 dred (\$300.00) dollars, for the price and value  
 of goods sold and delivered by the plaintiff to  
 the defendant at request: and in the like  
 sum of money for the price and value of goods  
 bargained and sold by the plaintiff to the de-  
 fendant at request; and in the like sum  
 of money for the price and value of work done,  
 and materials for the same provided by the  
 plaintiff for the defendant at request;  
 and in the like sum of money lent by the plain-  
 tiff to the defendant for the use of the plain-  
 tiff and in the like sum of money for money  
 paid by the plaintiff for the use of the defend-  
 ant at request; and in the like sum of  
 money for interest due from the defendant to

20

30

40

*State of Demand.*

the plaintiff for the plaintiff having foreborn moneys due from the defendant to the plaintiff at the defendant's request for a long time then elapsed; and in the like sum of money for money found to be due from the defendant to the plaintiff on account then and there stated between them; and the defendant afterwards to wit: on the day and year last aforesaid, in the county aforesaid, in consideration of the premises respectively promised to pay the said several last mentioned moneys respectively to the plaintiff on request; yet the defendant disregarded promises, and has not paid any of the said moneys or any part thereof; and in the like sum on a book account, a true copy of which is hereunto annexed, marked schedule and hereby made a part hereof; and in a like sum upon a certain promissory note of which the defendant is the maker and the defendant endorser of which a true copy is hereunto annexed marked schedule A and hereby made a part hereof. Said note was payable to the order of Nathan S. Katz, three months after date, which note was assigned and is now the property of the plaintiff herein.

Judgment will be claimed for the sum of three hundred dollars and cents together with lawful interest and costs of suit and interest from April 22, 1929.

McCARTHY & McTAGUE,  
Attorneys for Plaintiff.

*State of Demand.*

SCHEDULE A.

NOTICE TO DEFENDANT: the following is a Bill of particulars of the demand and copy of the promissory note whereon the annexed demand is founded.

\$300.00 Newark, N. J. January 21, 1929 10  
THREE MONTHS after date I promise to pay to the order of

NATHAN S. KATZ  
THREE HUNDRED ..... DOLLARS  
At Broad & Market National Bank-Forrest Hill Branch, Newark, N. J.  
Value Received.  
Due April 22nd.

(Signed) WILLIAM BERKOWITZ 20

(on back)

(Signed) NATHAN S. KATZ  
JOSEPH L. CUNNINGHAM

The suit is brought to recover the amount due thereon.

McCARTHY & McTAGUE,  
Attorneys for Plaintiff. 30

**AFFIDAVIT OF PROOF.**

Filed December 7, 1929.

FIRST DISTRICT COURT OF JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Contract.</i>  <i>Affidavit of Proof.</i>
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON. } *ss.*

20 JOSEPH L. CUNNINGHAM, of full age, being duly sworn, according to law, upon his oath deposes and says that:

30 I am the plaintiff in the above-stated cause and I sued William Berkowitz, defendant herein for the amount of a certain promissory note made to my order, dated January 21, 1929, and made by the defendant herein, in the amount of three hundred (\$300.00) dollars, which was payable three months from the date of its making. When said note became due on April 22, 1929, defendant failed and neglected to pay same and there is now due and owing on said note the sum of \$300.00 with interest from April 22, 1929, to date in the sum of \$16.30 making a total in all due deponent the sum of \$316.30 no part of which having been paid, although demanded.

(Signed) JOSEPH L. CUNNINGHAM.

*Order for Execution and Affidavit.*

Sworn and subscribed to before  
me this 5th day of December,  
1929.

(Signed) SOL WEISOLY,  
Attorney at law of New Jersey.

10

**ORDER FOR EXECUTION AND AFFIDAVIT.**

Filed December 19, 1929.

FIRST DISTRICT COURT OF JERSEY CITY.

JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Contract.</i>  <i>Order for</i> <i>Execution,</i> <i>etc.</i>	20
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The affidavit of Joseph L. Cunningham, the plaintiff and judgment creditor in the above-stated cause having been filed herein, showing that a judgment was recovered by said plaintiff on the 7th day of December, 1929, against the above-named defendant, for the sum of \$316.30 damages and costs, and afterwards a writ of execution was issued thereon and has been returned wholly unsatisfied, and that it remains wholly unpaid; and that said defendant William Berkowitz is employed by Lackawanna Laundry Company, and that his wages, debts, earnings, salary and income from trust funds or profits due and owing to him amount to the sum of \$500.00 a week and that the same is payable to him by said Lackawanna Laundry Co. and is

30

40

*Order for Execution and Affidavit.*

now due and owing to said judgment debtor and shall hereafter become due and owing to him; and said affidavit having been considered;

10 It is on this 19th day of December, 1929, ORDERED that execution do issue against the wages, earnings, salary and income from trust funds or profits due and owing to the said judgment debtor from said Lackawanna Laundry Company and said Lackawanna Laundry Company is ordered to hold from the wages of said William Berkowitz, the sum of \$50.00 dollars every monthly pay, and said amount being not more than ten percentum of the monthly pay of said William Berkowitz and that said Lackawanna Laundry Co. be and is hereby ordered to pay the sum so held as aforesaid to any constable of the City of Jersey City by whom said execution is presented, until the full amount of the judgment and costs of said suit, together with the costs hereof, and interest from the date of said judgment until the date of final payment to be fully paid and satisfied, and that said Lackawanna Laundry Co. is hereby restrained from paying the said money to the said defendant or to any person than the constable of the City of Jersey City, and it is further ORDERED that the said execution from its said presentation shall be a continuing lien and levy against the wages, etc. as the same becomes due, until the full amount herein specified shall be fully paid and satisfied, together with the subsequent costs and charges.

20

30

AUGUST ZIEGENER,  
Judge.

*Order for Execution and Affidavit.*FIRST DISTRICT COURT  
OF JERSEY CITY.

JOSEPH L. CUNNINGHAM,

*Plaintiff,**vs.*

WILLIAM BERKOWITZ,

*Defendant.**On Contract.*

10

*Affidavit.*STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } ss.

JOSEPH L. CUNNINGHAM, of full age, being duly sworn according to law, on his oath deposes and says that:

20

He is the plaintiff and judgment creditor in the above cause; that on the 7th day of December, 1929, judgment was recovered by said plaintiff in said cause against the defendants herein and judgment debtors, for the sum of \$316.30 damages and costs; that execution was thereafter issued thereon directed to any Constable of the City of Jersey City, and deponent is credibly informed and verily believes that the wages, etc., from trust funds or profits due William Berkowitz from Lackawanna Laundry Co. amount to \$500.00 every monthly pay; and that said sum of \$500.00 per month is now due and owing to said William Berkowitz, the judgment debtor, from Lackawanna Laundry Co. and will hereafter become due and owing to him.

30

Deponent hereby applies for the issuance of an execution against the wages, etc., of William Berkowitz according to the statute in such case

40

*Writ of Execution.*

made and provided, and states that no previous application has been made for this order.

JOSEPH L. CUNNINGHAM.

10 Sworn and subscribed to before me  
this 18th day of December, 1929.

SOL WEISOLY,  
Attorney at Law of New Jersey.

**WRIT OF EXECUTION.**

FIRST DISTRICT COURT OF JERSEY CITY.

20 STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.  
CITY OF JERSEY CITY. }

The State of New Jersey to the  
Sergeant-at-Arms of the First District  
(L. s.) Court of the City of Jersey City or to  
any Constable of said County. ROBERT  
SCHENKER,

30 YOU ARE HEREBY COMMANDED to levy and to  
make of the goods and chattels, monies, rights,  
credits of William Berkowitz, defendant, the  
sum of three hundred sixteen dollars, thirty  
cents damages and nineteen dollars, sixty-one  
cents, costs which Joseph L. Cunningham, plain-  
tiff, by judgment of the First District Court of  
the City of Jersey City, August Ziegner, Judge,  
rendered on the 7th day of December, one thou-  
sand nine hundred and twenty-nine recovered  
against him and also the cost thereof, and forth-  
with pay the same to the plaintiff, or in his  
absence, into said court and within thirty days

40

*Writ of Execution.*

from the time you shall receive this execution, make return of the proceedings had thereon.

WITNESS: AUGUST ZIEGENER, Esq., Judge of said court, at Jersey City aforesaid the seventh day of December in the year of our Lord one thousand nine hundred and twenty-nine.

B. FRANCES MARRON,  
Clerk.

10

Judgment .....	\$316.30
Costs of suit .....	19.61
Costs of execution .....	1.35
Alias do. ....	
Interest .....	
Mileage .....	
Dollarage .....	
Levy .....	
Advertising of Sale .....	
Adjournment of Sale .....	

20

McCARTHY & McTAGUE,  
Attorneys.

December 17, 1929.

The within writ of execution is hereby returned wholly unsatisfied.

30

ROBERT SCHENKER,  
Constable.

40

*Order for Execution.*

**EXECUTION.**

FIRST DISTRICT COURT OF JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>On Contract.</i>  <i>Execution.</i>
	<i>vs.</i>		
	WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>		

HUDSON COUNTY, ss.

The State of New Jersey to any Constable of the City of Jersey City.

(SEAL)

20     WHEREAS, on the 7th day of December, 1929, the plaintiff company herein recovered a judgment in the First District Court of Jersey City, against the above-named defendant for the sum of \$316.30 damages and costs, and afterwards a writ of execution issued out of said court upon said judgment which judgment remains wholly unsatisfied, and the amount remaining due on said judgment and execution is the sum of \$316.30 besides execution fees and interest from

30     the 6th day of December, 1929, until paid and satisfied, and

WHEREAS, said William Berkowitz is at present employed by the Lackawanna Laundry Co. and has wages, debts, earnings, salary and income from trust funds or profits due and owing to him to the amount of \$500. a month and that the same is payable to him by the said Lackawanna Laundry Co. and the same is now due and owing to said William Berkowitz and shall hereafter become due and owing to him and

40

*Order for Execution.*

WHEREAS, an order has been made in this cause by said District Court on the 19th day of December, 1929 directing the issuance of this writ and said writ to become a lien and continuing levy upon the wages, earnings, salary and income from trust funds or profits which become due to the said William Berkowitz from the said Lackawanna Laundry Co. to the amount of \$50 dollars of such wages, debts, earnings, salary and income, each month from trust funds or profits due.

10

(SEAL) NOW THEREFORE, we command you that you satisfy such judgment and costs with the interest thereon, together with your fees, out of the wages, debts, earnings, salary and income from trust funds or profits due to the said judgment debtor, William Berkowitz now due and owing to him and which shall hereafter become due and owing to him from the said Lackawanna Laundry Co., according to the provisions of the statute in such case made and provided; and that this execution and levy to be made thereunder shall be a lien and continuing levy upon the wages, debts, earnings, salary and income from trust funds or profits due and to become due to the said William Berkowitz from said Lackawanna Laundry Co. to the amount of fifty dollars, each month, until this execution and the expenses thereof are fully paid and satisfied; and that when this writ is satisfied, you make return of the proceedings had thereon.

20

30

WITNESS, HON. AUGUST ZIEGENER, Judge of said court at Jersey City aforesaid, the day of December, 1929.

B. FRANCES MARRON,  
Clerk.

40

*Order for Execution.*

	Judg. ....	\$316.30
	Costs .....	19.61
	Exec. ....	1.35
	Order .....	1.00
	Garn. ....	1.70
	Levy .....	.50
10	Dollorage .....	17.00
		<hr/>
		\$357.46

August 21, 1930.

I hereby return the within writ of execution wholly unsatisfied.

ROBERT SCHENCKER,  
Constable.

20

30

40

**RULE TO SHOW CAUSE.**

Filed March 25, 1930.

**FIRST DISTRICT COURT OF JERSEY CITY.**

JOSEPH L. CUNNINGHAM,

*Plaintiff,**vs.*

WILLIAM BERKOWITZ,

*Defendant.**On Contract.**Rule to  
Show Cause.*

10

Upon reading and filing the affidavit of Robert Schenker one of the constables attached to the First District Court of Jersey City, in the above-stated matter, it is upon this 25th day of March, 1930, ORDERED that the said Lackawanna Laundry Company, show cause before the First District Court of Jersey City, at No. 20 York street, on the 3rd day of April, 1930, at nine o'clock A. M., why they should not be adjudged guilty of contempt for not obeying an order for execution made by the said court on the 19th day of December, 1929, commanding the said Lackawanna Laundry to withhold a certain amount of money monthly from the salary of one William Berkowitz, and which order for execution was duly served upon the said Lackawanna Laundry Company in a suit in which James L. Cunningham is plaintiff and William Berkowitz defendant.

20

30

AUGUST ZIEGENER,  
Judge of The First District  
Court of Jersey City.

40

*Affidavit of Robert Schencker.*

FIRST DISTRICT COURT  
OF JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Contract.</i>  <i>Affidavit.</i>
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STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } ss.

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

20 He is a constable of the County of Hudson, attached to the First District Court of Jersey City; that he served a copy of an order for execution upon the Lackawanna Laundry Co. by handing same to an officer in charge thereof at their place of business in Jersey City, and that in conformance with said order made by this Court, he appeared at the end of the month and requested that the amount of money inserted in said order, which this court had ordered, be withheld, to be paid to him, in compliance with said order, but that said request was refused by an officer in charge of said company.

30 Your deponent further states that he had called up on the 'phone and made personal calls with reference to receiving this money, but was refused each and every time.

ROBERT SCHENCKER.

*Affidavit of Service.*

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

SOL WEISOLY,  
Attorney-at-Law of New Jersey.

10

## FIRST DISTRICT COURT OF JERSEY CITY.

JOSEPH L. CUNNINGHAM, <i>Plaintiff,</i>	} <i>On Rule.</i> <i>Affidavit of</i> <i>Service.</i>
<i>vs.</i>	
WILLIAM BERKOWITZ, <i>Defendant.</i>	

20

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

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

He served a true copy of the rule to show cause in the above matter on the Lackawanna Laundry, by giving same to an officer in charge thereof, on the 1st, day of April, 1930.

30

ROBERT SCHENCKER.

Sworn and subscribed to before  
me this 3rd day of April,  
1930.

SOL WEISOLY,  
Attorney-at-Law of New Jersey.

40

*Affidavit of William Berkowitz.*

**AFFIDAVITS.**

Filed May 1, 1930.

FIRST DISTRICT COURT OF  
NEW JERSEY.

10

JOSEPH L. CUNNINGHAM,  
*Plaintiff,*

*vs.*

WILLIAM BERKOWITZ,  
*Defendant.*

*On Contract.*

*Affidavit.*

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

20

WILLIAM BERKOWITZ, being duly sworn on his oath according to law, deposes and says:

30

1. I am the judgment debtor in the above-entitled cause and have read the affidavit of Joseph L. Cunningham, the plaintiff, in which he says that he "is credibly informed and verily believes that the wages, etc., from trust funds or profits due William Berkowitz from Lackawanna Laundry Co., amount to \$500 every month and that said sum of \$500 per month is now due and owing to said William Berkowitz, the judgment debtor, from Lackawanna Laundry Co. and will hereafter become due and owing to him."

40

2. Said statement is not the fact. Deponent is not at the present time nor was he at the time of the making of said affidavit by Joseph L. Cunningham, nor at the time that the garnishee execution in this cause was issued against Lacka-

*Affidavit of Herman Gottesman.*

wanna Laundry Co., an employee of the Lackawanna Laundry Co., or in the receipt of any salary from it.

WILLIAM BERKOWITZ.

Subscribed and sworn to before  
me this 1st day of May, 1930. 10

SAUL J. ZUCKER,  
A Master in Chancery of New Jersey.

FIRST DISTRICT COURT OF  
JERSEY CITY.

JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	20  <i>On Contract.</i>  <i>Affidavit.</i>
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STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } ss.

HERMAN GOTTESMAN, being duly sworn on his  
oath according to law, deposes and says: 30

1. That he is the office manager of the Lackawanna Laundry Co., 1208 Summit avenue, Jersey City, N. J., and in charge of all legal papers served upon the corporation and is authorized to make this affidavit.

2. That the judgment debtor in this cause, William Berkowitz, was not at the time of the alleged service of the garnishee execution in this 40

*Affidavit of Herman Gottesman.*

cause upon Lackawanna Laundry Co., or at the time of the making of the affidavit by Joseph L. Cunningham, upon which the garnishee execution was issued, nor since said dates, an employee of the Lackawanna Laundry Co., nor in the receipt of any salary from it.

- 10       3. That deponent was never served with the petition and order to show cause why Lackawanna Laundry Co. should not be adjudged in contempt for failure to observe the garnishee execution, nor was deponent's attention ever called to the existence of these papers prior to April 13, 1930, or thereabouts when a letter from Messrs. McCarthy and McTague, attorneys of the plaintiff was received at the Lackawanna Laundry, 1208 Summit avenue, Jersey City, ad-
- 20       vising that the matter of contempt for disobeying an order of the Court would be argued at 9 A. M. on Thursday, April 17, 1930, at the First District Court of Jersey City and immediately thereafter deponent communicated with Lionel P. Kristeller, attorney of the Lackawanna Laundry Co., to represent it in this matter.

HERMAN GOTTESMAN.

- 30       Subscribed and sworn to before  
me this 1st day of May, 1930.

SAUL J. ZUCKER,  
A Master in Chancery of New Jersey.

PETITION AND ORDER FOR DISCOVERY.

Filed May 3, 1930.

FIRST DISTRICT COURT OF  
JERSEY CITY.

JOSEPH L. CUNNINGHAM,

*Plaintiff,*

*vs.*

WILLIAM BERKOWITZ,

*Defendant.*

*Petition, &c.*

10

To the Honorable August Ziegner, Judge of the  
First District Court of the City of Jersey  
City.

20

The petition of Joseph L. Cunningham, the  
plaintiff in the above stated cause, respectfully  
shows, that on the 6th day of December, 1929,  
your petitioner recovered judgment in said cause,  
against the defendant therein, for the sum of  
three hundred and sixteen dollars and thirty  
cents together with costs of suit, and thereupon  
caused to be issued thereon a writ of execution  
directed to the Constable of the County of  
Hudson, which having been first duly recorded  
was delivered to said constable to be executed;  
that said constable has since duly returned said  
writ with a return that he could find neither  
goods, chattels, nor real estate whereof to make  
the said moneys or any part thereof, according  
to the exigency of said writ.

30

And your petitioner further shows that there  
remains due on said execution, the whole amount  
of said judgment, besides interest, no part there-

40

*Petition and Order for Discovery.*

of having been paid; and that he believes that the defendant William Berkowitz has property and money, and things in action due to him and held in trust for him where the trust has been created by, or the fund held in trust has proceeded from them over and above such property  
 10 as is reserved by law, to an amount exceeding fifty dollars.

Your petitioner therefore prays your Honor to make an order requiring the said defendant William Berkowitz to appear and make discovery, on oath, concerning his property and things in action, before your Honor, a Master in Chancery of New Jersey, or a Supreme Court Commissioner, to be designated in said order, at a time and place to be therein specified.

20 And your petitioner will ever pray.

Dated, May , 1930.

McCARTHY & McTAGUE,  
 Attorneys for Petitioner.

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

30 JAMES A. McTAGUE, JR., of McCarthy & McTague, attorneys for the above-named petitioner being duly sworn according to law, upon his oath deposes and says that the matters and things in the foregoing petition set forth, are true, to the best of his knowledge, information and belief.

And deponent says in fact, that there is due on the execution in said petition mentioned, the whole amount of \$316.30, recovered by the judgment therein mentioned, with interest, from the date of said recovery, and that said execution  
 40 was returned wholly unsatisfied with the return

*Petition and Order for Discovery.*

thereon stated in said petition, and deponent believes that the defendant W. Berkowitz has property and money, and things in action due to him and held in trust for him where the trust has been created by or the fund held in trust has proceeded from them over and above such property as is reserved by law, to an amount exceeding fifty dollars. 10

JAMES A. McTAGUE, JR.

Subscribed and sworn to this  
2nd day of May, A. D. 1930,  
before me

SOL WEISOLY,  
Attorney at Law of New Jersey.

20

30

40

*Petition and Order for Discovery.*FIRST DISTRICT COURT OF  
JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Order.</i>
vs.			
20	WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>		

Upon reading the foregoing duly verified petition in this cause, presented to me by the plaintiff therein, I do hereby order and require the defendant William Berkowitz to appear and make discovery on oath, concerning his property and things in action, before George R. Milstein, Esq., a Master in Chancery of New Jersey, at his office, No. 921 Bergen avenue, in the City of Jersey City, on the 9th day of May, 1930, at the hour of two-thirty in the afternoon.

Further ordered that a certified copy of this petition, affidavit and order be served upon said William Berkowitz at least two days before the return hereof.

Given under my hand this 3rd day of May,  
 30 A. D. 1930.

AUGUST ZIEGENER,  
 Judge.

*Testimony of William Berkowitz.*

**TESTIMONY.**

Filed June 5, 1930.

FIRST DISTRICT COURT OF  
JERSEY CITY.

JOSEPH L. CUNNINGHAM,

*Plaintiff,*

*vs.*

WILLIAM BERKOWITZ,

*Defendant.*

*Supplemen-  
tary Proceed-  
ings.*

10

This testimony taken before George R. Milstein, Esq., one of the Masters in Chancery of New Jersey, at his office at No. 921 Bergen avenue, Jersey City, on the 16th day of May, 1930, at the hour of three in the afternoon, pursuant to an order of Hon. August Ziegner, Judge of the First District Court of Jersey City, on the filing of a petition of the plaintiff in supplementary proceedings in this cause, as above stated.

20

Sol Weisoly, Esq., appearing on behalf of the plaintiff and the defendant William Berkowitz, also appearing in person.

30

Madelyn Keane, being duly sworn to take and transcribe the testimony herein to the best of her ability, the defendant, WILLIAM BERKOWITZ was called, sworn, and testified as follows:

*By Mr. Milstein.*

Q What is your name? A William Berkowitz.

40

*Testimony of William Berkowitz.*

Q Where do you live? A No. 49 Vassar avenue, Newark, New Jersey.

*By Mr. Weisoly.*

Q Are you married? A Yes, sir.

10 Q Do you live with your wife? A Yes, sir.

Q Do you live in an apartment house? A No, I am living with my in-laws. It is a one-family house.

Q Have you got your own furniture there? A Yes, sir.

Q How long have you lived there? A Two months. I used to have my own home at 294 Seymour avenue, which I lost on a foreclosure.

20 Q Where are you employed? A By Consolidated Laundries, of Maryland.

Q Where is your place of employment at? A Wherever they station me.

Q Where were you stationed this morning? A At Lackawanna Laundry, in Newark.

Q Where were you stationed yesterday? A At Newark, yesterday I was at the Lackawanna Laundry in Newark.

Q Where were you Monday of this week? A In Newark.

30 Q Were you ever at any other place but Newark? A Yes.

Q How long have you been with the Consolidated Laundries of Maryland? A Going on five years.

Q Were you ever employed out of the State within these five years? A Yes, sir.

Q When, and how long? A When I do not remember, it was so long ago.

40 Q How much of that five years have you spent out of the State? A I do not remember.

*Testimony of William Berkowitz.*

Q Approximately? A Maybe one-half or a year out all of that time.

Q The other four and one-half years you spent in this State while in their employ? A Yes.

Q Are they authorized to do business in this State? A I do not know. 10

Q Were they ever authorized to do business in this State? A I do not know, it is not my affairs.

Q Do you know if they filed a certificate to do business in this State? A It is not my affair, I told you before that.

Q Do you know if they ever filed a certificate to do business in this State? A I do not know.

Q Were they ever a corporation of this State? A Not to my knowledge. 20

*By Mr. Milstein.*

Q Have they a legal agent? A I do not know.

Q Where do you report for your work? A To New York.

Q Have they any Jersey City office or any New Jersey office that you know of? A No.

*By Mr. Weisoly. 30*

Q They have never had any New Jersey office at any time that you know of? A No, not Consolidated.

Q How do they pay you? A By check.

Q So much a week? A By the month or a period. I am under contract by the year.

Q How much do you get a year? A \$16,800 a year.

Q Paid in weekly installments? A No, either periodically or monthly. 40

*Testimony of William Berkowitz.*

Q How many checks, pay checks, do you receive from them on an average of one year?

A Well, not less than thirteen, some times in advance.

10 Q What does your employment consist of, in this State, for them? A As a representative; rerouting the business for them.

Q Just explain what your duties are? A I get business for them, collect money for them, reroute the business, etc.

Q You collect money in this State for them?

A I have it collected, I do not do it myself.

Q You solicit business for them in this State?

A Yes.

20 Q What do you do with the money that you have caused to be collected for them? A I deposit it for them in the bank.

Q In what bank? A Trust Company of New Jersey.

Q Under what name is that deposited? A I believe it is Consolidated Laundry.

Q Who presents this money to the bank to be deposited? A They have a man, Gottesman has charge of the office that takes care of this.

30 Q Does Gottesman deposit the money that you collect for the Consolidated Laundries? A That's right.

Q When you collect this money, what books do you enter receipts of these payments? A I do not make any entries at all, Mr. Gottesman does, or somebody that he designated.

Q Who gives you these bills to collect? A The office manager.

Q Who is the office manager? A Mr. Gottesman is one of them.

40 Q Tell me if this is so; Mr. Gottesman gives you bills to go out and collect, you get this col-

*Testimony of William Berkowitz.*

lected, and Mr. Gottesman has representatives, or himself enter them. You have representatives go out and collect. These bills represent money that people in New Jersey owe to the Consolidated Laundries of Maryland. You have this money collected, you receive this money from the various agents, then the money is brought to the office and given to Mr. Gottesman? A That's right. I ask the people to go and collect, where to go, and what to do. 10

Q Your orders come from Mr. Gottesman?

A As far as collections.

Q What other things do you do? A Only rerouting and selling.

Q For the Consolidated? A Yes.

Q Who gives you the tips as to the selling and rerouting? A Myself. 20

Q How many people do the Consolidated employ in this State? A I do not know.

Q How many people are employed in the office where you work at? A About 100 or 150 people.

Q All employed by the Consolidated Laundry?

A Yes, so far as I know.

Q Where is their main place of business? A Maryland is their main place. 30

Q Where are you employed? A At No. 41 High street, Newark, N. J.

Q Where else? A At No. 1208 Summit avenue, Jersey City, N. J.

Q During your time of employment, or while you are actually working, you are under the employ of the Consolidated Laundries, is that right? A That is right.

Q As far as you know, so are all of these other people? A As far as I know. 40

*Testimony of William Berkowitz.*

Q Do you ever have occasion to look at any of the books of the Consolidated Laundry? A No, sir.

Q Do you, yourself, ever work on the books of the Consolidated Laundry? A No, sir.

10 Q On any kind of a book? A What do you mean?

Q A pay roll, a ledger, or a time book? A No, never.

Q Do you know if there are any books in this State owned by the Consolidated Laundry? A I do not know.

Q When you receive your check as compensation for salary, on what bank is that check drawn? A It varies.

Q The average check? A I do not remember.

20 Q Name some of the banks that the checks are drawn on? A I do not remember.

Q Any on the Trust Company of New Jersey? A Payable to me? I do not know. They are usually either New York or Maryland banks.

Q Would you say for sure that you never received a check on a New Jersey bank? A I do not remember.

Q You may have? A Yes.

30 Q Whose name is signed on the checks you receive? A I believe Dean is one, and countersigned by different people.

Q Do you countersign employee's checks of the company? A No, sir.

Q Does Mr. Gottesman? A No, sir.

Q Are you familiar with the workings of the business, or aren't you? A As far as my work is concerned.

Q How long is this corporation in business? A About four and one-half years.

40 Q You are with them all of this time? A Yes.

*Testimony of William Berkowitz.*

Q How many trucks have you in New Jersey?

A I don't know.

Q Approximately how many? A I said I don't know.

Q Do they own any trucks in New Jersey?

A I presume they do.

Q How many? A I don't know. I don't operate the business. 10

Q Would you be surprised if you found out that the Consolidated were a corporation of the State at one time? A How would it surprise me?

Q Would you be surprised if I told you that you were the statutory agent at one time? A It would not surprise me.

Q It is possible that you were the statutory agent without your knowing anything about it? 20

A That is possible, it is not at my command, they can designate anybody that they want.

Q Are you familiar or affiliated or connected in any way with the Lackawanna Laundry? A Yes, sir.

Q In what respect? A Manager.

Q Do you receive a salary for working for them? A No, sir.

Q You do their work free? A I do their work for the Consolidated, of which the Lackawanna is a branch. 30

Q Who outlines your work for you? A Myself.

Q You take it upon yourself to manage the Lackawanna Laundry as part of your duties with the Consolidated? A Yes, I am responsible for it, and I report to the Consolidated of my activities.

Q You yourself are employed by the Consolidated? A Yes. 40

*Testimony of William Berkowitz.*

Q Your pay comes from the Consolidated?  
A Right.

Q Your duties of said Consolidated is to solicit business, rerouting business, direct subsidiaries, collect money for the Consolidated Laundries in this State? A Yes.

10 Q Do you own any shares in the Consolidated corporation? A Maybe a fraction of one share.

Q Have you any certificates showing if you own any stock? A Possible, if I went to look for it, I would.

Q You don't know whether you own any or not? A I know I own maybe a fraction of a share. I did at one time own more.

Q How much did you own at one time? A Several hundred shares.

20 Q What is the value of their shares? A According to the market.

Q What is the value at time you sold it? A \$14 or \$15 a share.

Q Who did you sell it to? A I believe to Bonner Brooks and Company.

Q Do you own an automobile, Mr. Berkowitz? A No, sir.

Q Have you a license to drive one? A Yes, sir.

30 Q Did you ever own one? A No, sir.

Q Do you own any shares of stock in the Lackawanna Laundry? A No, sir. I did at one time.

Q Are they a corporation of this State? A Yes, sir.

Q Who is their agent? A I don't know. Maybe myself or anybody else. They designate anyone they want, from time to time.

Q Do you know who their agent is? A No.

40 Q Possibly it is you? A Possibly.

*Testimony of William Berkowitz.*

Q Who makes out the pay roll sheets at No. 1208 Summit avenue? A Mr. Gottesman or his assistants.

Q You do not supervise any of that work?

A No, sir.

Q Did you ever see the payroll sheet? A Yes, sir. 10

Q Do you look through the list of names on the payroll sheet? A Sometimes.

Q Did you ever remember seeing William Berkowitz on the payroll sheet? A No. Most positive.

Q Whose payroll sheet is that that you look at sometimes? A The Lackawanna Laundry.

Q Is Mr. Gottesman's name on their payroll? A Yes, sir. 20

Q The Consolidated do not have any payroll sheets here, do they? A No, not outside of Lackawanna.

Q Where do these people get paid that go out under your direction, to collect and receive money for the Consolidated Laundry? A By the Lackawanna.

Q Where are the rest paid? A By the Consolidated.

Q Here in Jersey City or in Newark? A In Newark. 30

Q Who makes out their checks? A Mr. Dean, and counter-signed by different people.

Q Who hands these checks out to these people? A They are mailed direct or sent to me, and I mail them to the people.

Q Persons employed by the Consolidated get checks in mail from the Consolidated? A Sometimes.

Q You say the checks are sometimes mailed to you and turned over to the employees in this 40

*Testimony of William Berkowitz.*

State? A That is a few times, once or twice a month maybe.

Q You never looked at any of the books of the Lackawanna or Consolidated at your offices in Newark or Consolidated? A Lackawanna but not Consolidated.

10 Q Did you ever make any entries in any of these books? A No, sir.

Q You never entered anything in any of these books? A No, sir.

Q Did you ever see any books belonging to the Consolidated at any of the offices mentioned? A What kind of books?

Q Any kind of book pertaining to the running of the business of the corporation, for instance, payroll books, ledgers, etc.? A Consolidated? No.

20 Q Did you, or do you know if they have any books in this State outside possibly of order books? A No, they haven't.

Q Did you ever see any of the trucks owned by the Consolidated in this State? A No, not to my knowledge.

Q You never saw, as far as you remember, any of the trucks? A The trucks I saw, most of them have the printing Consolidated system service.

30 Q You saw those trucks? A Yes.

Q Did you ever see any of the trucks which is supposed to be owned by the Consolidated Laundry Co., in this State? A The trucks are owned by the individual corporations.

Q Did you ever see any trucks with the names of the Consolidated Laundry Company printed and nothing else? A I think so.

Q With nothing else on them? A Yes.

40 Q How many? A I don't know.

*Testimony of William Berkowitz.*

Q A dozen? A I don't remember.

Q Twenty? A I don't remember.

Q No idea? A No.

Q Do you own any building and loan shares?

A No, sir.

Q Have you people an office at No. 44 High street, Newark? A No. 41 High street, Lackawanna you mean?

10

Q You do some work there also, don't you?

A Yes.

Q For the Consolidated? A Yes.

Q You have absolutely no connection with the Lackawanna at all, except to superintend their workings as an employee of the Consolidated? A Yes, sir.

Q Are you sure of that? A Positive.

Q Are there any garnishments against your salary at the present time that are working?

20

A Yes, sir.

Q Where were these orders filed? A What do you mean?

Q Where are they filed? A I don't get the question.

Q Who has a copy of that order, in your company? A I don't know. The main office I presume of the Consolidated Laundries.

Q Where is the main office? A In Maryland.

30

Q How many garnishments are working at the present time against you? A The law only permits one at a time.

Q One garnishment is against you? A Yes.

Q Who has that judgment? A Elizabethport Banking, on a bond.

Q When did that garnishment begin working? A Last year.

Q How much is it for? A Fifty thousand and some odd dollars.

40

*Testimony of William Berkowitz.*

Q Who is taking out that money out of your salary? A Main office.

Q Was that order filed in Maryland? A I don't know, that's the main office.

Q Where was this garnishment obtained against you? A In New Jersey.

10 Q Did you ever receive a copy of the garnishment order? A I believe I have.

Q Out of what court is it issued out of? A I don't remember.

Q To whom is it directed to? A I don't know.

Q Will you produce a copy of that here? A I haven't it.

Q How much money is taken out of your pay each time you receive a check? A 10 per cent.

20 Q Now do you remember if any of these pay checks were drawn on any N. J. bank? A The checks goes direct to the Banking Company.

Q You say you do not remember? A No.

Q Do you remember if any is drawn on any bank in any state. A I am not positive.

Q Do you know if there are other garnishments filed against you? A Yes.

Q How many? A I don't know.

30 Q Are there any waiting to take effect if this is paid? A Yes.

Q How many? A According to judgments, well about \$300,000.

Q Why do you avoid your question? A I am not.

Q Is there one more garnishment against you? A There's more than one.

Q Is there five? A There was one before.

Q With whom are these orders filed? A I don't know.

40 Q How do you know if there are any garnishments against you? A The people that have

*Testimony of William Berkowitz.*

judgments against me tell me that they have garnishments.

Q Have you heard of any new ones? A No. This one is for a bond judgment on property.

Q Who are the plaintiffs in that action? A Elizabeth Port Banking as far as I know.

Q Do you know if there are any garnishment orders at the office of the Lackawanna Laundry against you? A No. I am positively not paid by them. 10

Application made by Sol Weisoly for an adjournment to Thursday, May, 22, 1930, at 2:30, at the same place.

Pursuant to an order of discovery made on the 3rd day of May, 1930, by the Honorable August Ziegner, Judge of the First District Court of Jersey City, I, George R. Milstein, a Master-in-Chancery of New Jersey, sat and heard the testimony taken of William Berkowitz, the defendant in the above matter, and hereby certify that the same is a true copy of said testimony taken at said hearing, and also following is the costs taxed for said hearing. 20

Making report .....	\$10.00	
40 folios at 30c each .....	12.00	
Swearing one witness .....	.25	30
Two summons .....	.80	
Attendance fee .....	6.00	

Total .....\$29.05

Attendance fee for adjourned hearing .....	6.00
--------------------------------------------	------

Total .....\$35.05

GEORGE R. MILSTEIN, 40  
Master in Chancery of New Jersey.

**PETITION AND ORDER FOR DISCOVERY.**

Filed May 20, 1930.

FIRST DISTRICT COURT OF JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Petition, &amp;c.</i>
	<i>vs.</i>		
	WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>		

To the Honorable August Ziegner, Judge of  
the First District Court of the City of Jersey  
City.

20       The petition of Joseph L. Cunningham the  
plaintiff in the above-stated cause, respectfully  
shows, that on the 6th day of December, 1929,  
your petitioner recovered judgment in said cause,  
against the defendant therein, for the sum of  
\$316.30 dollars and       cents together with costs  
of suit, and thereupon caused to be issued  
thereon a writ of execution directed to the Con-  
stable of the County of Hudson, which having  
30       first duly recorded was delivered to said con-  
stable to be executed; that said constable has  
since duly returned said writ with a return that  
he could find neither goods, chattels, nor real  
estate whereof to make the said moneys or any  
part thereof, according to the exigency of said  
writ

And your petitioner further shows that  
there remains due on said execution, the whole  
amount of said judgment, besides interest, no  
part thereof having been paid; and that he be-

40

*Petition and Order for Discovery.*

believes that the defendant William Berkowitz has property and money, and things in action due to him and held in trust for him where the trust has been created by, or the fund held in trust has proceeded from them over and above such property as is reserved by law, to an amount exceeding fifty dollars.

10

Your petitioner therefore prays your Honor to make an order requiring the said defendant William Berkowitz to appear and make discovery, on oath, concerning his property and things in action, before your Honor, a Master in Chancery of New Jersey, or a Supreme Court Commissioner, to be designated in said order, at a time and place to be therein specified.

And your petitioner will ever pray.

McCARTHY & McTAGUE,  
Attorneys for Petitioner.

20

Dated, May 20, 1930.

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

JAMES A. McTAGUE, JR., of McCarthy & McTague, attorney for the above-named petitioner, being duly sworn according to law, upon his oath deposes and says that the matters and things in the foregoing petition set forth are true, to the best of his knowledge, information and belief.

30

And deponent says in fact, that there is due on the execution in said petition mentioned, the whole amount of \$316.30 dollars and cents, recovered by the Judgment therein mentioned, with interest, from the date of said recovery, and that said execution was returned wholly

40

*Petition and Order for Discovery.*

10 unsatisfied with the return thereon stated in said Petition, and deponent believes that the defendant Wm. Berkowitz has property and money, and things in action due to him and held in trust for him where the trust has been created by or the fund held in trust has proceeded from them over and above such property as is reserved by law, to an amount exceeding Fifty Dollars.

JAMES A. McTAGUE, JR.

Subscribed and sworn to this 20th day  
of May, A. D. 1930, before me.

SOL WEISOLY,  
Attorney-at-Law of New Jersey.

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*Petition and Order for Discovery.*

## FIRST DISTRICT COURT OF JERSEY CITY.

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 JOSEPH L. CUNNINGHAM,

*Plaintiff,*
*vs.*

WILLIAM BERKOWITZ,

*Defendant.*


---

} *Order.*

10

Upon reading the foregoing duly verified petition in this cause, presented to me by the plaintiff therein, I do hereby order and require the defendant William Berkowitz to appear and make discovery on oath, concerning his property and things in action, before August Ziegener, Judge of the said court at the court room, No. 20 York street, in the City of Jersey City, on the 29th day of May, 1930 at the hour of four in the afternoon.

20

Further ordered that a certified copy of this petition, affidavit and order be served upon said William Berkowitz, personally, at least 3 days before the return hereof.

Given under my hand this 20th day of May, A. D. 1930.

30

AUGUST ZIEGENER,  
 Judge of First District Court  
 of Jersey City.

Adj. June 5, 1930.

A. Z., Jdg.

40

*Testimony of William Berkowitz.*

**TESTIMONY.**

FIRST DISTRICT COURT OF JERSEY CITY.

10	JOSEPH L. CUNNINGHAM, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Supplemen- tary Pro- ceedings.</i>
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20 This testimony taken before August Ziegener, Esq., one of the Masters in Chancery of New Jersey, at the First District Court, No. 20 York street, on the 5th day of June, 1930, at the hour of three in the afternoon, pursuant to an order of Hon. August Ziegener, Judge of the First District Court, of Jersey City, on the filing of a petition of the plaintiff in supplementary proceedings in this cause, as above stated.

Sol Weisoly, Esq., appearing on behalf of the plaintiff and the defendant William Berkowitz, also appearing in person, and his attorney Lionel P. Kristeller by Saul J. Zucker.

30 Madelyn Keane, being duly sworn, to take and transcribe the testimony herein to the best of her ability, the defendant WILLIAM BERKOWITZ was called, sworn, and testified as follows:

*By Mr. Weisoly.*

Q Where do you reside? A 49 Vassar avenue, Newark, N. J.

Q Where are you employed? A Consolidated Laundries of America.

*Testimony of William Berkowitz.*

Q Where is their place of business? A Maryland and New York.

Q Where are you stationed at? A In Jersey City and Newark, with the Lackawanna Laundries.

Q What is your salary? A \$16,800 a year.

Q What do your duties consist of? A Manager of the Lackawanna Laundries and any instructions I get from the Consolidated. 10

Q What kind of work do you do for the Consolidated in this State? A Manager of the Lackawanna Laundries.

Q Do they do business in this state? A Not the Consolidated, the Lackawanna does.

Q The Consolidated does not do any business in this state? A No business in this state.

Q Do you remember once before saying that your duties in the Consolidated consisted of rerouting business for them in Jersey City, and collecting money for them in Jersey City? A Yes, that is in connection with Lackawanna work. For the Lackawanna, I make collections and re-route business. 20

Q You do not remember saying that you do this for the Consolidated, do you? A It is my business for the Consolidated as work for the Lackawanna. 30

Q When this money is collected for the Consolidated, whose name is it deposited in, the Consolidated account? A Lackawanna deposits it for the Consolidated.

Q Have the Consolidated Laundries any trucks in this state? A No, sir.

Q Have they their names on any trucks in this state? A They may have on some.

Q Are you sure? A They have, on some. The Consolidated is a stock company and have on 40

*Testimony of William Berkowitz.*

different trucks, the names of the companies having stock.

Q How long are the Consolidated in existence? A About five years.

Q How long are you with them? A About five years.

10 Q Do you know if they are incorporated in this state? A Not to my knowledge.

Q Are they authorized to do business in this state? A Not that I know of.

Q If you were their statutory agent at one time or other, would you have known about it? A Yes, if I was so informed.

Q Suppose I told you that they were incorporated in this state at one time and you were their statutory agent, would that surprise you? A That would not surprise me.

Q Who is the statutory agent for the Lackawanna Laundry? A I don't know.

Q Are they incorporated in this state? A Yes.

Q Could you be their statutory agent without knowing about it? A Yes.

Q Have the Consolidated any bank account in this state? A In the Trust Company of New Jersey.

30 Q Who do you receive your pay checks from? A Consolidated.

Q These checks are drawn on what banks? A Never at any one time for any particular bank.

Q Any Jersey banks? A On one occasion it was.

Q Do you own any real estate? Now? A No, sir.

Q Do you own any Building and Loan shares? A No, sir.

40

*Testimony of William Berkowitz.*

Q You do not receive any compensation from the Lackawanna Laundries do you? A No, sir.

Q Your business consists of managing the Lackawanna Laundry for the Consolidated Laundry? A Yes, sir.

Q Do you ever order any merchandise for the Lackawanna Laundry? A If I am instructed by the Consolidated Laundry, I do. 10

Q Do you ever remember if you did? A No, sir.

Q Have the Consolidated any books in this state? A No, sir.

Q Do they employ any other people in this state? A I do not know.

Q You are not sure? A No.

Q Do you remember that you said you receive checks to pay other employees in this state? A Yes, occasionally. 20

Q Then they do employ other people in this state besides yourself? A I am not sure.

*By Judge Ziegner.*

Q How long have you been paid this salary of \$16,800 a year? A About three years.

Q How are you paid? Weekly, monthly, or what? A Periodically, about every four weeks, 13 times a year. 30

Q Where do you receive your monthly payment? A I mostly get it from New York.

Q When you do not go to New York, where do you get it? A They sent it to the Lackawanna Laundry.

Q Through whom do you receive it? A Mr. Dean, secretary.

Q Where is his office? A In New York.

Q Where? A West 42nd street. 40

*Testimony of William Berkowitz.*

Q The monies you collect from these customers, in what name are they deposited in the bank? A They are collected for the Lackawanna and deposited in the name of the Consolidated.

10 Q What branch of the Trust Company do you deposit the monies in? A Journal Square.

Q Why are these checks made out to the Lackawanna Laundry? A Because they do the business.

Q Under what arrangement? A They do the business with the customer.

Q These customers do business directly with the Lackawanna Laundry? A Correct.

20 Q Why does the Consolidated engage this laundry to do this business for them? A They are a holding company and own most of the stock.

Q Are any of the officers of the Lackawanna, to your knowledge, any of the officers of the Consolidated? A I am not an officer of the Lackawanna. I don't know. I used to be an officer of the Lackawanna.

30 Q Do you solicit business for the Lackawanna in this state? A Under the instructions of the Consolidated.

Q To your knowledge has the Consolidated Laundries ever owned any trucks in this state? A What do you mean?

Q To your knowledge has the Consolidated Laundries ever owned any trucks in this state? A Not to my knowledge.

Q You were the statutory agent for them in May, 1929? A I do not remember.

40 Q Do you mean to say that as the statutory agent in this state for that company you do not,

*Testimony of William Berkowitz.*

or did not know anything about it? A I do not remember.

Q Who were the officers of the Consolidated before its surrender in May, 1929? A Same officers as at present.

Q The same officers as constitute the officers of the Lackawanna? A I would not say that. 10

Q Who to your knowledge, is the president? A Mr. J. A. Genkins, 122 E. 42nd street, New York City.

Q Who is the secretary? A Mr. Dean, and Mr. Weiss is the treasurer. He is at 122 42nd street, New York City.

Q Who is the president of the Lackawanna? A I believe Mr. Genkins is president.

Q Who is the secretary? A Mr. Dean. 20

Q Treasurer? A I am not sure, I think Mr. Weiss.

Q Are there any garnishments against you? A There is a garnishment order against me now.

Q With whom? A Elizabeth Port Banking Company.

Q Located where? A Elizabeth, N. J.

Q How much? A In the sum of \$50,000.

Q Who issued the order in that for the judgment? A I do not know. 30

Q Are you paying on it? A Yes, 10% of my salary.

Q Who do you pay it to? A To the Elizabeth Port Banking.

Q Did you receive any order to compel you to pay the money in that judgment? A Yes.

Q What court? A I do not remember.

Q Who is the person that garnished your salary? A Miller & Miller of Newark.

Q In what court? A A New York court. 40

*Testimony of William Berkowitz.*

Q What other orders are against you? A There are quite a number of judgments.

Q I did not ask you that; what other orders are against you. Are there any others? A There is one other.

10 Q There are now at least two garnishee proceedings against you? A Yes, one I am now paying.

Q How do you make these payments in that order? A Made direct by the Consolidated Laundries.

Q From New York? A Yes.

Q Did you ever see any of the payments made? A No.

Q You do not know to whom the payments are made? A To the Elizabeth Port Banking.

20 Q Directly, or through counsel? A That I can't say; I believe directly to the bank.

*By Mr. Weisoly.*

Q Mr. Berkowitz, you just told the Judge that you received a garnishee order, that it was served upon you; do you remember answering about three weeks ago, you did not receive any order, that it was never served upon you? A I don't remember.

30

*By Judge Ziegner.*

Q In the matter of the Elizabeth Port Banking, do you know whether that arrangement to pay them the sum of money was under an order of the Court or an agreement between you and the Elizabeth Port Banking? A I think it was an order, and then by agreement.

40 Judge Ziegner: You may take an order in this case for \$30.00 a week, to be paid

*Testimony of William Berkowitz.*

by William Berkowitz. You may also include all of the costs.

That is all.

Pursuant to an order of discovery made on the 20th day of May, 1930, by the Honorable August Ziegner, Judge of the First District Court of Jersey City, I, August Ziegner, a Master-in-Chancery of New Jersey, sat and heard the testimony taken of William Berkowitz, the defendant in the above matter, and hereby certify that the same is a true copy of said testimony taken at said hearing. 10

AUGUST ZIEGENER,  
Master-in-Chancery of  
New Jersey. 20

30

40

**ORDER.**

Filed June 10, 1930.

FIRST DISTRICT COURT OF  
NEW JERSEY.

10

JOSEPH L. CUNNINGHAM,

*Plaintiff,**vs.*

WILLIAM BERKOWITZ,

*Defendant.**On Contract.**Order.*

20

It appearing that a judgment was recovered in the above court in favor of the above plaintiff against the above defendant, in the sum of \$316.30, plus interest and costs of suit, and

It further appearing that an order of discovery was made requiring the above-named defendant to appear before George R. Milstein, a Master in Chancery of New Jersey, at his office in Jersey City, on May 9, 1930, and

30

It further appearing that a new order of discovery was made requiring the above defendant to appear before the Honorable August Ziegner, Judge of the First District Court at the First District Court, at No. 20 York street, Jersey City,

And it further appearing according to the testimony taken in pursuance of said order of discovery that the above named defendant is earning \$16,800 a year, and

40

And it is on this 5th day of June, 1930, ORDERED, that the above-named defendant pay to the above plaintiff or his attorney, the sum of \$30 each and every week out of his earnings,

*Order.*

beginning June 7, 1930, and each and every week thereafter, until the sum of the said judgment together with interest and costs is fully paid and satisfied.

It is further ORDERED, that a true copy of this order, certified by Messrs. McCarthy & McTague, attorneys for the plaintiff, be served upon the defendant within 15 days of date hereof. 10

AUGUST ZIEGENER,  
Judge First District Court of  
Jersey City.

**ORDER.**

FIRST DISTRICT COURT OF  
JERSEY CITY. 20

JOSEPH L. CUNNINGHAM,

*Plaintiff,*

*vs.*

WILLIAM BERKOWITZ,

*Defendant.*

*On Contract.*

*Order.*

30

It appearing that a judgment was recovered in the above court in favor of the above plaintiff against the above defendant in the sum of \$316.30, plus interest and costs of suit, and

It further appearing that an order of discovery was made requiring the above-named defendant to appear before George R. Milstein, a Master in Chancery of New Jersey, at his office in Jersey City, on May 9, 1930, and 40

*Order.*

It further appearing that a new order of discovery was made requiring the above defendant to appear before the Honorable August Ziegener, Judge of the First District Court at the First District Court at No. 20 York street, Jersey City,

10 And it further appearing according to the testimony taken in pursuance of said order of discovery that the above-named defendant is earning \$16,800.00 a year, and

It is on this 15th day of July, 1930, ORDERED that the above-named defendant pay to the above-named plaintiff or his attorney the sum of \$30.00 each and every week out of his earnings, beginning June 7, 1930, and each and every weeks thereafter, until the sum of the said judgment, together with interest and costs, is fully  
20 paid and satisfied.

It is further ORDERED that a true copy of this order certified by Messrs. McCarthy & McTague, attorneys for the plaintiff, be served upon the defendant within 15 days of the date hereof.

AUGUST ZIEGENER,  
Judge, First District Court of Jersey City.

30

40





*Testimony of William Berkowitz, direct.*

Subscribed and sworn to before  
me this 9th day of September,  
1930.

HARRY N. REEVES,  
A Supreme Court Commissioner of  
New Jersey.

10

WILLIAM BERKOWITZ, being duly sworn by  
the Commissioner, testified as follows:

*Direct examination by Mr. Zucker.*

Q You are the prosecutor in the within action?

A Yes, sir.

Q And were you served with an order in a  
suit in the First District Court of Jersey City  
wherein Joseph L. Cunningham was plaintiff and  
you were the defendant, the order being dated  
July 15, 1930, requiring you to pay out of your  
earnings, \$30 each and every week, beginning  
June 7, 1930? A I was served with that order,  
yes, sir.

20

Q And prior to the time that you were served  
with that order, were you served with an order  
requiring you to show cause why you should  
not be ordered to make payments at stated  
periods in installments out of your income, on  
account of the execution in that cause? A No,  
sir.

30

Q Were you served with any notice that such  
an order as the one referred to, dated July 15,  
1930, would be entered? A No, sir.

Q Do you know whether any order to show  
cause why you should not be required to pay a  
stated sum in installments was made in the First  
District Court of Jersey City? A Not that I  
know of.

40

*Testimony of William Berkowitz, direct.*

Q At the time that the order in the First District Court of Jersey City dated July 15, 1930, was entered, was there a garnishee execution outstanding against you? A Yes, sir.

Q In whose favor was that garnishee execution issued? A The one I know positive was  
10 out was the Elizabethport Banking Company.

Mr. Zucker: I offer in evidence a true copy of an order for installment execution entered in the New Jersey Supreme Court, Union County, in a suit entitled the Elizabethport Banking Company, a corporation, plaintiff, against Berkolin Realty Company, a corporation, and William Berkowitz, defendants, said order being dated June 17, 1929.

20 (Order received in evidence and marked Exhibit P. 1.)

Mr. Weisoly: I want to object to that being admitted unless it is shown as to who received the said garnishee order, upon whom it was served, and that it was served in this State or out of this State, and whether the said order is in effect at the present time, and working.

30 Mr. Zucker: I offer in evidence a true copy of an execution against salary issued in the same cause and recorded in the office of the Clerk of the Supreme Court in book A-57 of Process, on page 99.

Mr. Weisoly: I object to that for the same reasons as the other. Unless it is connected up as to who it was served upon, what person of the corporation, and the reasons I have just stated in my previous objection.

40 (Paper received in evidence and marked Exhibit P. 2.)

*Testimony of William Berkowitz, cross.*

Q Mr. Berkowitz, by whom were you employed at the time that garnishee execution was issued? A The Consolidated Laundry Companies of Maryland.

Q In pursuant to the garnishee execution referred to, a true copy of which has been offered in evidence and marked Exhibit P. 2, has there been deducted from your salary a ten per cent. thereof? A Yes, sir. 10

Q And is that garnishee execution still open? A Yes, sir.

Q Has the full amount of the judgment against you in favor of the Elizabethport Banking Company for \$30,733.40, with interest from February 6, 1929, been fully paid? A No, sir.

*Cross examination by Mr. Weisoly. 20*

Q Mr. Berkowitz, what is your salary, month salary? A \$1,400.

Q A month? A It is not paid monthly; it is paid periodically.

Q On what basis are you paid? A What do you mean on what basis?

Q Are you a yearly salary man? A I am contracted for five years, and it expires December 31st. 30

Q At what salary? A At the present time \$16,800 a year.

Q Where do you receive your pay checks? A I receive them in New York.

Q Do you call for them in New York? A Sometimes I call for them and sometimes they mail them to me.

Q This ten per cent. that you allege to be taken out, where is that taken out at? A At the office of the Consolidated Laundries. 40

*Testimony of William Berkowitz, cross.*

Q Where is that at? A Wherever the check is made out.

Q In what state is that? A Most of the times it is in New York State.

Q Do the offices of the Consolidated Laundries move around? A Sometimes.

10 Q Where has it been during the year 1929?  
A I believe it is 1440 Broadway.

Q New York? A Yes, sir.

Q Do you know where this garnishee order was served? A I don't know.

Q Is the Consolidated Laundries Corporation a corporation of the State of New Jersey? A Not to my knowledge.

Q Were they a corporation of this State last year? A Not to my knowledge.

20 Q Assuming that they were not, would you know about that? A Well, I have reason to believe I should know.

Q As far as you know they are not such a corporation in this State? A As far as I know.

Q Do they do business in this State, do you know? A The Consolidated does not.

Q Upon whom was this garnishee order served? A I don't know.

30 Q Was it ever served, to your knowledge?  
A They wouldn't garnishee my salary if they didn't.

Q Just "yes" or "no." A Yes.

Q Was it served in this State? A I don't know.

Q Were you ever served with any order commanding you to appear before August Ziegener, sitting as Master in Chancery of the First District Court of Jersey City, to testify?

40 Mr. Kristeller: I object to that because the return of the writ made by the judge

*Testimony of William Berkowitz, cross.*

contains a copy of that order and a copy of the testimony there taken. This testimony is not taken for the purpose of creating a new record or adding to the return.

A Yes.

Q Do you remember answering a question as to what salary you received? A Yes, sir. 10

Q And you answered that question before Judge Ziegner? A Yes, sir.

Q Are you employed exclusively by the Consolidated Laundries? A Exclusively.

Q You are not employed by any one else in this State? A No, sir.

Q And this garnishee order referred to here as Exhibit P. 1, you never saw the original copy of that? A I wouldn't say I never saw it, but I don't remember. 20

Q Was it ever served upon you? A I believe it has.

Q Aren't you sure? A I have been served with so many papers I can't remember one from the other.

Q Do you remember whether you were ever served with this garnishee order which is represented by Exhibit P. 1? A I don't remember, but I believe I was. 30

Q Do you remember answering on two different occasions previously that you never saw such an order—all you know is that there is an order filed somewhere—you don't know what state it is in—all you know is that they were taking out money from your salary?

Mr. Kristeller: I object to the form of the question because the proper method of such an examination is to repeat the question and answer given to it. 40

*Testimony of William Berkowitz, cross.*

A I don't remember.

Q You don't remember? A No, sir.

Q Do you remember you testified on two different occasions in supplementary proceedings? A Do I remember testifying?

Q On two different occasions in supplemental proceedings? A Yes.

Q You say that the Consolidated is not a corporation of this State? A That is right.

Q You don't know upon whom the execution issued, known as Exhibit P. 1, was served? A I don't know.

Q Do you know where that order is, at which office? A I don't know.

Q You don't know whether it is in this State or out of the State? A It is not in this State, I am sure, because the Consolidated has no office here.

Q Were you ever sued in this particular case referred to here as Exhibit P. 1, in any other state but this State? A Not that I know of.

(It is stipulated and agreed by and between the respective counsel in this matter that the signature of the witness to this transcript of the testimony be waived.)

30 I certify that the foregoing deposition was taken by Louis Winard, a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically the testimony given and to reproduce in typewriting said testimony; that such deposition was taken in my immediate presence and hearing, and by the said stenographer sworn as above, and I believe he has correctly stated the evidence given.

HARRY N. REEVES,

A Supreme Court Commissioner  
of New Jersey.

*Exhibit P. 1.***EXHIBIT P. 1.**

NEW JERSEY SUPREME COURT.

UNION COUNTY.

THE ELIZABETHPORT BANKING  
COMPANY, a corporation,  
*Plaintiff,*

*vs.*

BERKOLIN REALTY COMPANY, a  
corporation, and WILLIAM  
BERKOWITZ,  
*Defendants.*

10

*Action  
at Law.**Order for  
Installment  
Execution.*

It appearing to the Court that judgment hav- 20  
ing been entered in this court against William  
Berkowitz in the above-entitled action, execution  
having been issued and returned unsatisfied; and  
the said defendant having appeared before Nich-  
olas W. Bindseil, Esquire, a Supreme Court Com-  
missioner of the State New Jersey, and from the  
testimony of said defendant taken before said  
commissioner, it appears that the defendant is  
in receipt of a salary of fourteen hundred (\$1400)  
dollars per month from Consolidated Laundries 30  
Corporation, a New York or Maryland corpora-  
tion, authorized to transact business in New  
Jersey:

IT IS on this 17th day of June, 1929, on motion  
of Sidney W. Eldridge, attorney for the plaintiff,  
ORDERED that execution issue out of this court to  
the Sheriff of Essex County, and that the Sheriff  
levy upon ten per centum of the monthly salary  
of the defendant William Berkowitz, and that the  
Consolidated Laundries Corporation, by whom 40

*Exhibit P. 2.*

the defendant is employed, shall pay over to the officer presenting said execution, ten per centum of the monthly wage of the defendant, so long as he shall be employed by the Consolidated Laundries Corporation, and until the execution be fully satisfied.

- 10 And it is further ordered that if said defendant is entitled to any additional salary in the nature of a bonus, commission, or in any manner whatsoever, the said Consolidated Laundries Corporation shall pay over to the officer presenting said execution ten per centum of the said additional salary, so long as he shall be employed by the Consolidated Laundries Corporation, and until the execution be fully satisfied.

20 CLARENCE E. CASE,  
Justice of the Supreme Court.

Entered June 20, 1929, on motion of Sidney W. Eldridge, attorney for plaintiff.

**EXHIBIT P. 2.**

NEW JERSEY, ss.

- 30 The State of New Jersey to our Sheriff of our County of Essex, GREET-  
(L. S.) ING: WE COMMAND YOU that of the monthly salary and earnings, wages, debts, income from trust funds or profits now due or hereafter to become due, which William Berkowitz, defendant, receives from Consolidated Laundries Corporation, a New York or Maryland corporation, employer, whose registered agent is the said William Berkowitz, with the registered office at No. 294
- 40

*Exhibit P. 2.*

Seymour avenue, Newark, New Jersey, you make ten per centum thereof, pursuant to an order of court entered under date of June 20th, 1929, until the sum of Thirty thousand, seven hundred thirty-three dollars and forty (\$30,733.40) Cents damages and costs adjudged to The Elizabethport Banking Company, a corporation, plaintiff, lately in this court, are paid and satisfied, and that you pay monthly to the said plaintiff, or its duly authorized agent or attorney, said reservation of wages, etc. 10

We further command you that upon satisfaction of said plaintiff's damages and costs, plus interest and subsequent charges endorsed hereon, or upon a complete termination of said defendant's salary, you immediately thereafter return this writ to our Justices of our Supreme Court at Trenton, with a statement as to execution annexed. 20

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice at Trenton aforesaid, this 21st day of June, A. D. 1929.

FRED L. BLOODGOOD,  
Clerk.

SIDNEY W. ELDRIDGE,  
Attorney. 30

(Made from copy sent in by attorney.)

*Exhibit P. 2.*

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

ELIZABETHPORT BANKING COMPANY, a corporation,

10

*Plaintiff,*

*vs.*

WILLIAM BERKOWITZ,

*Defendant.*

ACTION AT LAW

Execution against salary.

(Chapter 113 Laws of 1916)

Sidney W. Eldridge, Attorney of  
Plaintiff,

20

286 N. Broad St.,  
Elizabeth, N. J.

Levy damages .....\$30,672.62

Costs ..... 60.78

---

\$30,733.40

Int. from

Feb. 6, 1929.

30

Costs on Supplemental Proceed—

ings .....\$20.25

Cost of Writs ..... 4.00

Shff's fees.

Recorded in the office of the Clerk of the Supreme Court in A57 of Process, page 99.

FRED L. BLOODGOOD,

Clerk.

40



*Reasons.*

by the statute in such case made and provided, in that said order did not issue after or upon notice to the prosecutor to show cause why an order should not be made requiring the prosecutor to make payments at stated periods in installments out of his income on account of the execution issued pursuant to the judgment in the aforesaid cause now pending in the First District Court of Jersey City.

10

3. Because the said order is erroneous and illegal, in that it endeavors to deprive the prosecutor of his property without due process of law, guaranteed to the prosecutor by the Constitution of the State of New Jersey, and the Constitution of the United States.

20

4. That said order of the First District Court of Jersey City, dated July 15, 1930, is unjust and unreasonable in that it attempts to coerce the prosecutor, under penalty of fine and imprisonment, to relinquish to his creditors property in excess of that required by law, and the statutes in such cases made and provided.

5. Because said order was made without notice to the prosecutor and in violation of his constitutional rights.

30

6. Because said order is nugatory and of no effect, because it directs the prosecutor to perform an order incapable and impossible of performance.

7. That because the said order aforesaid is in divers respects illegal, erroneous and was improvidently, improperly and illegally entered.

Dated August 4, 1930.

LIONEL P. KRISTELLER,  
Attorney of Prosecutor.

40

**OPINION OF SUPREME COURT.**

Filed November 18, 1930.

**NEW JERSEY SUPREME COURT.**

No. 277, October Term, 1930.

10

WILLIAM BERKOWITZ,

*Prosecutor,*

*vs.*

THE FIRST DISTRICT COURT OF  
JERSEY CITY, AUGUST ZIEG-  
ENER, Judge of said Court,  
*Defendants.*

*On  
Certiorari.*

Argued October 7, 1930. Decided November 18, 1930. 20

For prosecutor, Lionel P. Kristeller.

For defendants, McCarthy & McTague.

Before Justices Campbell and Bodine.

PER CURIAM: The writ brings up an order made in the First District Court of Jersey City directing the defendant to pay to the plaintiff the sum of \$30 each and every week out of his earnings beginning June 7, 1930, and each and every week thereafter until a judgment in the sum of \$316.30, together with interest and costs is fully paid. The order was entered pursuant to a supplement to the District Court Act, Pamphlet Laws 1924, p. 431 (*Italics ours*), as follows: 30

“Hereafter when a judgment has been recovered in any District Court of this State and where an execution issued upon said judgment has been returned wholly or partly unsatis- 40

*Opinion of Supreme Court.*

fied and where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing to the judgment debtor, *or shall thereafter become due and owing to him to the amount of eighteen dollars or more per week*, the judgment creditor may apply to the court in which said  
10 judgment was recovered, without notice to the judgment debtor and upon satisfactory proofs of such facts by affidavits or otherwise, *the court must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of said judgment debtor*, and on presentation of such execution by the officers to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust  
20 funds or profits are due and owing, or thereafter become due and owing, to the judgment debtor, *said execution shall become a lien and a continuing levy upon the wages, debts, earnings, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein, which shall not exceed ten per centum unless the income of said debtor shall exceed the sum of one thousand dollars per annum*, in which case the judge may order a  
30 larger percentage, and said levy shall become a continuing levy until said execution and the expenses are fully satisfied and paid or until modified as hereinafter provided, *but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor shall be satisfied at one time*, and where more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor they shall be satisfied in the order of priority in  
40

*Opinion of Supreme Court.*

which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing.”

It appeared that the defendant was in receipt of an annual salary of \$16,800. The Supreme Court had previously entered an order directing his employers to pay 10% of this salary, as earned, upon a judgment of the Elizabethport Banking Company in the sum of \$30,000. It is submitted to us that because of this order the district court was without jurisdiction. We do not so view the statute. Obviously, there may be satisfaction of only one judgment at a time in district court executions, but the statute was not designed to prevent execution for wages because there had been a previous execution in another court. The limitation upon the general language of the statute directing the issuance of the execution is confined to execution in a district court, and provides that judgments there entered shall be satisfied out of salaries one at a time. The defendant had a salary of \$1,260 a month, free of the Elizabethport Banking Company levy. The district court certainly could levy upon this even though it could not satisfy several district court executions at the same time.

The order under review is affirmed.

**RULE AFFIRMING ORDER, &c.**

**NEW JERSEY SUPREME COURT.**

No. 277, October Term, 1930.

10	WILLIAM BERKOWITZ, <div style="text-align: right;"><i>Prosecutor,</i></div> <div style="text-align: center;"><i>vs.</i></div> FIRST DISTRICT COURT OF JERSEY CITY, AUGUST ZIEGENER, Judge of the said Court, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>On          Certiorari.          Rule Affirm-          ing Order, &amp;c.</i>
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20 The Court having inspected the transcript and the proceedings of the Judge of the First District Court of Jersey City, returned with the certiorari in this cause and the reasons for reversing the order of the Court below, and heard the argument of counsel, and having duly considered same;

30 It is ORDERED that the order of the Judge of the First District Court of Jersey City directing the defendant to pay to the plaintiff the sum of thirty (\$30.00) dollars, each and every week out of his earnings beginning June 7, 1930, and each and every week thereafter until the judgment in the sum of three hundred sixteen dollars and thirty cents (\$316.30) together with interest and costs, is fully paid, be in all things affirmed with costs.

Entered this 24th day of November, 1930.

On motion of

40 McCARTHY & McTAGUE,  
 Attorneys for Defendants.

**NOTICE OF APPEAL.**

Filed December 4, 1930.

**NEW JERSEY SUPREME COURT.**

WILLIAM BERKOWITZ,

*Prosecutor-Appellant,**vs.*FIRST DISTRICT COURT OF JERSEY  
CITY, AUGUST ZIEGENER, Judge  
of the said Court,*Defendants-Respondents.*

10

*On  
Certiorari.**Notice  
of Appeal.*To Messrs. McCarthy & McTague, 921 Bergen  
avenue, Jersey City, N. J., attorneys of de- 20  
fendants-respondents.

SIRS:

PLEASE TAKE NOTICE, that William Berkowitz  
does hereby appeal to the New Jersey Court of  
Errors and Appeals, the last resort of all causes  
in New Jersey, from the whole of the order en-  
tered in the above-entitled cause in the New  
Jersey Supreme Court on November 24, 1930,  
and from each and every part of said order. 30

Yours, etc.,

LIONEL P. KRISTELLER,  
Attorney of Prosecutor-Appellant.

December 3, 1930.

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

## New Jersey Court of Errors and Appeals

WILLIAM BERKOWITZ,  
*Prosecutor-Appellant,*

*vs.*

FIRST DISTRICT COURT OF JERSEY  
CITY and AUGUST ZIEGENER,  
Judge of said Court,  
*Defendants-Respondents.*

*On  
Certiorari.*

*Appeal from  
the Supreme  
Court.*

### BRIEF OF APPELLANT.

(Italics ours except as otherwise noted.)

#### Statement.

This is an appeal from an order entered in the New Jersey Supreme Court on November 24, 1930, affirming an order of the First District Court of Jersey City, made July 15, 1930, which latter order was removed to the Supreme Court by a writ of certiorari allowed by Justice Campbell. The District Court order, brought up for review in this court, was an order made in proceedings supplementary to execution and directed the appellant, a judgment debtor, to pay to Joseph L. Cunningham, his judgment creditor, (the plaintiff in the proceedings in the District Court) "the sum of \$30.00 each and every week out of his earnings \* \* \* until the sum of said judgment, together with interest and costs was fully paid and satisfied."

#### Facts.

On December 7, 1929, Joseph L. Cunningham recovered a judgment against the appellant, in

the First District Court of Jersey City, New Jersey, for the sum of \$335.91 damages and costs (S. C., p. 15). Execution was issued upon said judgment and was returned unsatisfied (S. C., p. 15). On December 19, 1929, the First District Court of Jersey City, ordered the issuance of an execution against the wages, earnings, salary, etc., of the appellant, due from the Lackawanna Laundry Company by whom it was alleged he was employed. The order directed the taking of \$50.00 each month out of the appellant's salary (S. C., p. 16.) This order was granted under the authority of Section 11 Chap. 204 P. L. 1924 also found on p. 981 Cum. Sup. 1924. No payments were made by the Lackawanna Laundry Company, whereupon an application was made to have that company adjudged guilty of contempt for failure to obey the aforesaid garnishee execution of December 19, 1929 (S. C., p. 19). The contempt proceedings thus instituted, being manifestly improper, the plaintiff abandoned them of his own accord. Although no formal order was entered, there is no question as to the fact of the abandonment of the last mentioned contempt proceedings.

On May 3, 1930, the respondent, August Ziegner, Judge of the First District Court of Jersey City, ordered the appellant to appear before a Master in Chancery to make discovery concerning his property and things in action in proceedings supplementary to execution (S. C., p. 28). The record discloses that the appellant appeared and was fully examined (S. C., pp. 29 to 41). Thereafter, and on May 20, 1930, another order was made by the same court directing the appellant to again appear and make discovery before the respondent August Ziegner, as Judge of said court, concerning his property and things

in action (S. C., p. 45). The appellant appeared and was examined fully for the second time (S. C., pp. 46 to 52).

The next step was the entry of an order by the district court below on July 15, 1930 (S. C., p. 55), directing the appellant to pay to Joseph L. Cunningham, the plaintiff, or his attorney, the sum of \$30.00 each and every week out of appellant's earnings beginning June 7, 1930, said payments to continue weekly until the judgment in the district court below, together with interest and costs, was fully paid and satisfied. This order was apparently entered pursuant to Section 10 of Chapter 204, P. L. 1924, entitled "A Supplement to 'An Act Concerning District Courts' (Revision of 1898, Approved June 14, 1898)," also found at p. 981 Cum. Supp. 1924.

*The examination before the Master in Chancery as well as the one conducted before the respondent, August Ziegner himself, established the fact that there was then and at that very moment, an outstanding execution actually in effect by virtue of a judgment in the sum of \$30,733.40 entered in the New Jersey Supreme Court by Elizabethport Banking Company against the appellant, William Berkowitz; also, that the Sheriff of Essex County was and for some time prior to the issuance of the second execution had been, collecting a sum equal to 10% of the appellant's salary towards the satisfaction of the Supreme Court judgment (S. C., p. 51).*

Notwithstanding these facts, the respondent August Ziegner, proceeded to and did make the order now under review.

No question is, or has been raised as to the fact of the execution now in force and effect, pursuant to which 10% of appellant's salary is col-

lected monthly by the Sheriff of Essex County and applied towards the satisfaction of the Elizabethport Banking Company judgment.

The appellant contended in the court below that the order of the District Court under review was an execution against salary, notwithstanding its form, because both sections of the District Court Act hereinafter set out at length were to be read together, and that a proceeding under these sections was for the purpose of satisfying out of the salary of the judgment debtor a judgment that had been obtained against him. This contention was adopted in the court below and the appellant submits to that construction. Appellant believes that a reading of the several sections of the statutes hereinafter referred to and the cases cited in this brief are convincing beyond doubt of the soundness of this contention.

#### POINT I.

**Only one execution against the salary of a judgment debtor shall be satisfied at one time and where more than one of such executions has been issued, they shall be satisfied only in the order of their priority.**

Executions against salaries are authorized both under the Execution Act (C. S. Cum. Sup. 1924, p. 1207, Sections 71-9J and 9-L), and under the District Court Act (C. S. Cum. Sup. 1924, p. 981, Sections 61-204J and 204K). Both acts are almost identical word for word. We quote verbatim the sections of both acts and have capitalized the few words in each act that differ.

Sections 204J and 204K in the Cumulative Supplement above referred to and being the sec-

tions taken from the District Court Act, are as follows:

“In case it shall be made to appear by affidavit that a judgment debtor is entitled to, or is in receipt of *an income* other than from such trust funds as are now exempt by law, the Court may make an order requiring the defendant to show cause why he should not be ordered to make payments at stated periods, in installments (and upon such terms as the Court may direct), out of such income on account of the execution. And upon the return of the order to show cause, or at any time to which the hearing may be continued, may make an order for such payments as aforesaid; and at any subsequent time, on application, may modify the terms thereof as may be just.”

Section 204K:

“Hereafter when a judgment has been recovered IN ANY DISTRICT COURT OF THIS STATE and where an execution issued upon said judgment has been returned wholly or partly unsatisfied and *where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing to the judgment debtor*, or shall thereafter become due and owing to him to the amount of eighteen dollars or more per week, the judgment creditor may apply to the court in which said judgment was recovered, without notice to the judgment debtor, and upon satisfactory proofs of such facts by affidavits or otherwise the court must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of said judgment debtor and on presentation of such execution by the officers to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or thereafter become due and owing, to the judgment debtor, said execution shall become a lien and a con-

tinuing levy upon the wages, debts, earnings, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein, which shall not exceed ten per centum unless the income of said debtor shall exceed the sum of one thousand dollars per annum, in which case the judge may order a larger percentage, and said levy shall become a continuing levy until said execution and the expenses are fully satisfied and paid or until modified as hereinafter provided, *but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor shall be satisfied at one time, and where more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor they shall be satisfied in the order of priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing.*"

For the convenience of the Court as we have stated, we now quote section 9-J and 9-L of the Cumulative Supplement on page 1207, from the Execution Act. These sections are as follows:

Section 9-J:

"In case it shall be made to appear by affidavit that a judgment debtor is entitled to, or is in receipt of *an income* other than from such trust funds as are now exempt by law, the COURT OR A JUDGE THEREOF, may make an order requiring the defendant to show cause why he should not be ordered to make payments at stated periods, in installments (and upon such terms as the COURT OR A JUDGE, may direct), out of such income on account of the execution. And upon the return of the order to show cause, or at any time to which the hearing may be continued, may make an order for such payments as aforesaid; and at any subse-

quent time, on application, may modify the terms thereof as may be just."

Section 9-L:

"Hereafter when a judgment has been recovered and where an execution issued upon said judgment has been returned wholly or partly unsatisfied and *where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing to the judgment debtor*, or shall thereafter become due and owing to him to the amount of eighteen dollars or more per week, the judgment creditor may apply to the court in which said judgment was recovered, OR THE COURT HAVING JURISDICTION OF THE SAME, without notice to the judgment debtor, and upon satisfactory proofs of such facts by affidavits or otherwise, the court IF A COURT NOT OF RECORD, A JUDGE OR JUSTICE THEREOF MUST ISSUE, OR IF A COURT OF RECORD, A JUDGE OR JUSTICE must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of said judgment debtor and on presentation of such execution by the officers to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or thereafter become due and owing, to the judgment debtor, said execution shall become a lien and a continuing levy upon the wages, debts, earnings, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein, which shall not exceed ten per centum unless the income of said debtor shall exceed the sum of one thousand dollars per annum, in which case the judge may order a larger percentage, and said levy shall become a continuing levy until said execution and the expenses are fully satisfied and paid or until modified as hereinafter provided, *but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said*

*judgment debtor shall be satisfied at one time, and where more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor they shall be satisfied in the order of priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing."*

A careful reading of these sections of the two statutes will clearly indicate their similarity. As stated at the opening of this brief, appellant agrees that the intention of the Legislature, accepted by the Supreme Court, was that in both acts the two sections each refer to EXECUTIONS against the salary of the judgment debtor. It is forcibly urged, however, that the intent of the Legislature in the enactment of the Execution Act and the District Court Act, must be presumed to have been that all relating statutes must be read together. The subject matter of one is so intimately bound up with the other as to virtually constitute a single enactment, binding, however, upon the several jurisdictions to which they apply. This places the determination in this case upon the construction of several statutes, directly within the scope of the *Board of Health v. Fruman*, 6 Misc. 1021, in which case our Supreme Court held:

"These acts are all in *pari materia* and must be read conjunctively as one continuous act."

Appellant respectfully submits that if the Legislature intended to permit executions against the salary of the debtor to be satisfied other than in the order of their priority or to be operative concurrently against the debtor's wages, it had at its command adequate words to give expression to such intent. Neither statute contem-

plates, nor did the Legislature intend, that the wages, salary, earnings or income of the judgment debtor should be subject to a multiplicity of executions or orders concurrently operative, and this without regard to what court the same issued from.

The clear intent was to limit the enforcement of executions to one at a time in the order of priority. Unquestionably the motive and purpose of the Legislature in permitting but one execution to be operative at a time, was, to avoid the besieging and harassing of the wage earner coupled with his attendant impoverishment. And it is but reasonable to assume that the Legislature, in proposing to subject "wages," "salary" and "earnings," to execution, that it proceeded cautiously. The logic of this assumption is apparent. While the object was to take a portion of the judgment debtor's wages towards the satisfaction of a judgment, it was deemed important to leave him enough to retain his interest in his work, or continue in his employment.

It was realized that the judgment debtor could defeat an execution by the mere expedient of quitting his job. This would result in loss to both debtor and creditor, as well as an economic loss to the community. It was also undoubtedly reasoned that unemployment, or frequent changes of employment are subversive of public good. And, doubtless, consideration was given to the problem of the employer's willingness to retain an employee whose wages he is legally bound to apportion among a diversity of claimants in whom he has no interest.

And as a further indication of the intent and purpose underlying the limitations placed upon the operation of executions against wages to one

at a time, the attention of this Court is respectfully drawn to the view taken by the Supreme Court in *Hershenstein v. Hahn*, 77 N. J. L. 39, where Mr. Justice Swayze, speaking for the Court, said:

“The statute does not contemplate that a man should devote all of his earnings to his creditors; to require that would in substance make him the slave of his creditors, and require the court to enforce the servitude.”

*Black on Construction and Interpretation of Laws*, 204, in treating the subject of statutes relating to the same subject matter, says:

“Statutes in *pari materia* are to be construed together; each legislative act is to be interpreted with reference to other acts relating to the same matter or subject. The reasons which support this rule are two-fold. In the first place, all the enactments of the same legislature on the same general subject matter are to be regarded as parts of one uniform system \* \* \*. In the course of the entire legislative dealing with the subject we are to discover the progressive development of a uniform and consistent design. \* \* \* In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject, and to have shaped its new enactment with reference thereto. \* \* \* Secondly, the rule derives support from the principle which requires that the interpretation of a statute shall be such, if possible, as to avoid any repugnancy or inconsistency between different enactments of the same legislature. To achieve this result it is necessary to consider all previous acts relating to the same matters, and to construe the act in hand so as to avoid, as far as may be possible, any conflict between them.”

And in 36 *Cyc.*, p. 1147 (II), dealing with statutes in *pari materia*, it said:

“\* \* \* In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. \* \* \* With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed” so that if “seemingly in conflict with each other” they “should be harmonized \* \* \*”

It is, therefore, submitted on this point that the purpose and intent of the Legislature is clear that irrespective out of what court the execution was issued, the law preserved to the debtor his salary, wages, earnings and income over and above 10% thereof and executions against such wages, salary, etc., in excess of 10% must be satisfied in the order of priority in which such executions are presented.

This conclusion must necessarily follow since both acts and all sections thereof relating to the same subject matter must be read together and when they are so read there is but one conclusion; namely, that but one execution at a time may be in effect against a judgment debtor's salary. The record discloses the existence of a prior execution in effect against the appellant's wages by virtue of the judgment obtained against him by the Elizabethport Banking Company (S. C., p. 60), and appellant maintains, therefore, that the respondent, Judge of the First District Court of Jersey City, was without power to make the order subjecting appellant's wages to a second or subsequent execution being satis-

fied simultaneously with the execution issued out of the Supreme Court. The order of the Supreme Court appealed from should be reversed and the order of the First District Court of Jersey City to review should be vacated and set aside.

### POINT II.

The order by the First District Court of Jersey City subjecting prosecutor's wages to a second execution, having been made without notice to prosecutor, was improvidently and unlawfully granted.

Section 10, so far as pertinent to Point II in this brief, provides:

“\* \* \* the Court may make an order requiring the defendant to show cause why he should not be ordered to make payments at stated periods \* \* \*. And upon the return of the order to show cause, \* \* \* may make an order for such payments as aforesaid \* \* \*.”

The Prosecutor has neither received nor been given any notice of any kind with respect to the order made against him; nor has any order to show cause been made or served upon him in any proceeding to subject him or his wages to the order made against him (S. C., p. 59).

The order under review, made by the Judge of the First District Court, was made during and in the course of the examination of the Prosecutor before said Judge. This was in direct contravention of the procedure indicated in Section 10. The following excerpt from the record (S. C., p. 52) is dispositive of the matter.

*“By Judge Ziegener.*

Q In the matter of the Elizabethport Banking, do you know whether that arrangement to pay them the sum of money was under an order of the Court or an agreement between you and the Elizabethport Banking? A I think it was an order, and then by agreement.

Judge Ziegener: You may take an order in this case for \$30.00 a week, to be paid by William Berkowitz. You may also include all costs.

That is all.”

*Re Berkowitz v. First District Court of Jersey City.*

### POINT III.

The decision of the Supreme Court below was contrary to the intent of the Legislature, in that the Legislature intended that only one execution against wages could be in effect at the same time.

The Supreme Court in its opinion held that the District Court, being bound by the District Court Act solely, was justified in making the order under review because there was *no other District Court execution* in effect at that time. The force of that argument at best is highly technical, and to appellant, unreasonable, because it permits precisely what is prevented if the question involved either two District Court Executions or two Circuit Court Executions.

It is quite evident that if legislative intent is to be construed, in accordance with the cases decided in this State, and more particularly referred to in Point I, then it was the intent of the Legislature that at no time should more than 10% of a judgment debtor's salary, be applied in satisfaction of his debts.

If the construction placed by the Supreme Court is to be used in construing the Execution Act, then it will be possible for two or more executions to be in effect at the same time, in which event one or the other would contravene the effect of the sections hereinbefore quoted.

The amount involved is not the criterion, as it seems to have been with the Supreme Court in coming to its conclusions. The percentage of wages taken is the primary object to be followed. If more than 10% of the debtor's salary can be levied upon, then it may be that a greater percentage of his income will be taken to pay his creditors than was intended by the Legislature. A situation would arise similar to that referred to in the case of *Hirschenstein v. Hahn, supra*, and it might be said that the Court in order more than 10% of a man's wages in satisfaction of a judgment were enforcing a servitude.

#### CONCLUSION.

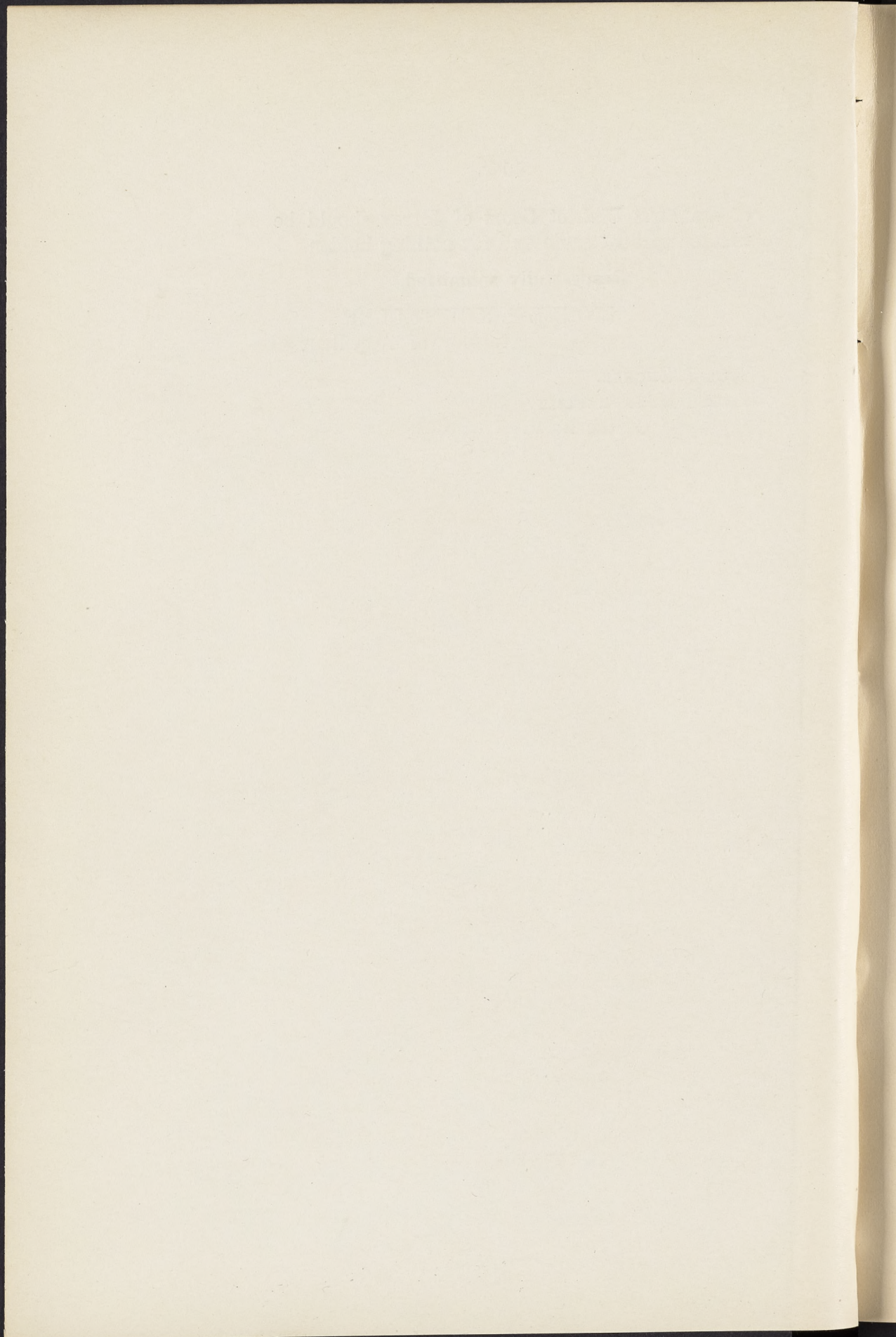
The uncontroverted evidence in this case disclosing the fact that the order of the First District Court of Jersey City made July 15, 1930, was made and entered without notice to the appellant and that the direction in said order required immediate weekly payments while there was then outstanding and in force an execution against the salary of the appellant in violation of the statutes hereinbefore set out and that the Supreme Court erred in affirming said order, it is submitted that the order of the Supreme Court affirming the order of July 15, 1930, of the First District Court of Jersey City should be reversed and the order

of the First District Court of Jersey should be vacated and set aside and for nothing holden.

Respectfully submitted,

LIONEL P. KRISTELLER,  
Attorney of Appellant.

SAUL J. ZUCKER,  
GEORGE H. ROSENSTEIN,  
On the Brief.



New Jersey Court of Errors and Appeals

WILLIAM BERKOWITZ,  
Prosecutor,

vs.

FIRST DISTRICT COURT OF JERSEY  
CITY and AUGUST ZIEGENER,  
Judge of the said Court,  
Defendants.

On Certiorari.  
Appeal from  
the New Jersey  
Supreme Court.

BRIEF OF DEFENDANTS.

Facts.

The summons was issued out of the First District Court of Jersey City on October 1st, 1929, and served personally upon the defendant on October 11th, 1929, and made returnable on October 17th, 1929, at which time same was adjourned until October 31st, 1929, and on which day the defendant not appearing a no appearance was entered thereon at the request of the plaintiff's attorney. Subsequently, on December 7th, 1929, an affidavit made by the plaintiff below having been submitted to the Court, judgment was entered thereon in the sum of \$316.30 plus \$19.61 costs.

Subsequently, execution having been issued thereon, same was returned unsatisfied December 17th, 1929. Subsequently thereto a garnishee execution and order was issued to Robert Schenker, Constable, to be served on the Lackawanna Laundry Company. On March 25th, 1930, a rule to show cause was issued why the Lackawanna

Laundry Company should not be held in contempt. The same was made returnable on April 3rd, 1930, and adjourned until May 1st, 1930.

This action was abandoned and a new order issued on May 5th, 1930, directing the prosecutor herein to appear before George R. Milstein, a Master in Chancery of New Jersey, and subsequently, on May 20th, 1930, another order was made, directing the prosecutor herein to appear before the Judge of the First District Court, and the said prosecutor did appear on June 5th, 1930, at which time an order was made, and the same not having been served, a subsequent order was made on July 15th, 1930, which is the subject matter under dispute. On August 4th, 1930, the writ of certiorari was allowed, the return of the said writ being August 22nd, 1930.

THE DEFENDANTS' BRIEF WILL ANSWER THE POINTS RAISED BY THE PROSECUTOR IN THE SAME ORDER AS SET FORTH IN THE PROSECUTOR'S BRIEF.

## POINT I.

**Only one execution against the salary of a judgment debtor shall be satisfied at one time and where more than one of such executions has been issued, they shall be satisfied only in the order of their priority.**

Executions may be issued against salaries under our law under the Execution Act (C. S. Cum. Sup. 1924, p. 1207, Sec. 79-9-J, and 9-L) and also under District Court Act (C. S. Cum. Sup. 1924, p. 981, Sec. 61-204-J and 204-K).

The appellant urges that the intent of the Legislature in enacting the Execution Act and the District Court Act are relating statutes and therefore must be read together. The Supreme Court in

determining the case at bar held that the "limitation upon the general language of the statute directing the issuance of the execution is confined to execution in a District Court and provides that judgments there entered shall be satisfied out of salaries one at a time", and the Supreme Court in considering the case at bar further said:

"Obviously there may be satisfaction of only one judgment at a time in District Court executions, but the statute was not designed to prevent execution of wages because there had been a previous execution in another court."

Your respondent respectfully contends that this contention is correct, for the District Courts of this State are special statutory tribunals and their procedure is prescribed by the Act of the Legislature and are given power to enforce their judgments by executions and they are also given the power to issue writs of attachment and enforce them by judgments, etc. and those proceedings are to be strictly pursued in such court in accordance with their own statutory provisions (*Edwards vs. Stein*, 94 New Jersey Equity 251).

Your respondents respectfully urge that the Execution Act and the District Court Act both serve the same purpose, but the Execution Act serves that purpose in Courts other than the District Court. This is clearly so since our Legislature saw fit to enact the District Court Act and to include therein a provision for executions, and we therefore respectfully submit that it was the purpose and intent of the Legislature that there be an Execution Act and that there also be a District Court Act and that an execution under the Execution Act would not bar an execution under the District Court Act. It may be said in passing that only one execution may be satisfied at a time under the Execution Act or under the District

Court Act but such is not the case here. There was never a valid, workable execution made under the Execution Act in the case at bar, and if for the sake of argument it may be said that there was a valid execution under the Execution Act and if it could be said that the defendant was making payments in installments under an order of the Court by virtue of the Execution Act, we still respectfully urge that your respondent would not be barred from recovering on his execution, for your respondent's execution is under the District Court Act and is not effected by an execution having been issued in another court.

## POINT II.

**The order by the First District Court of Jersey City subjecting prosecutor's wages to a second execution having been made without notice to the prosecutor, was improvidently and unlawfully granted.**

"The prosecutor under this heading states that the prosecutor has neither received nor been given any notice of any kind with respect to the order made against him, nor has any order to show cause been made or served upon him in any proceedings to subject him or his wages to the order made against him."

An examination of the appellant's brief will disclose that the appellant has stated the facts to be as follows (S. C., page 2, line 25):

On May 3rd, 1930, the respondent, August Ziegner, Judge of the First District Court of Jersey City ordered the appellant to appear before a Master-in-Chancery to make discovery concerning his property and things in action in proceeding supplementary to execution (S. C.,

page 28). The record discloses that the appellant appeared and was fully examined (S. C., pages 29 to 41). On May 20th, 1930, another order was made by the same court directing the appellant to appear and make discovery before the respondent, August Ziegener, as Judge of the said Court concerning his property and things in action (S. C., page 45), and the appellant appeared and was fully examined for the second time (S. C., pages 46 to 52). On page 3 of the appellant's brief, line 4, the appellant states:— "the next step was the entry of an order by the District Court below on July 15th, 1930 directing the appellant to pay to Joseph F. L. Cunningham, the plaintiff or his attorney, the sum of \$30.00 each week and every week out of the appellant's earnings beginning June 7th, 1930, said payment to continue weekly until the judgment in the District Court below, together with interest and costs was fully paid and satisfied". An examination of the state of the case filed by the appellant in this cause shows that on May 20th, when the appellant appeared before the Hon. August Ziegener, Judge of the First District Court of Jersey City to make discovery concerning the appellant's property and things in action, Judge Ziegener on that day in the presence of the appellant said:

"You may take an order in this case for \$30.00 a week to be paid by William Berkowitz. You may also include all of the costs" (S. C., p. 52, lines 39-40, and page 53, lines 1-2).

Your respondent therefore respectfully contends that the appellant's second point is without merit as the testimony clearly shows the prosecutor was present at the time the order by the Judge of the First District Court of Jersey City was directed and signed although the record may

show that a subsequent order was not actually signed by the Court until July 15th, 1930, because the order of June 5, 1930, was not served on the appellant is immaterial and did not demand the presence of the appellant in the Court at that time to make it a valid and binding order.

### POINT III.

**The decision of the Supreme Court below was contrary to the intent of the Legislature in that the Legislature intended that only one execution against wages should be in effect at the same time.**

In considering the above point, your respondent respectfully refers your Honorable Court to Point One of respondent's brief.

There was no evidence before the Judge of the First District Court that the prosecutor herein was paying under an order of any court in this state any monies at the time he made the present order and under the circumstances, we submit that Judge Ziegener had a right to issue such an order.

The testimony before Judge Ziegener at the time he made this order was as follows:

That the prosecutor was employed by the Consolidated Laundries of Maryland (S. C., page 30, lines 19-20) and that the prosecutor had been employed by them for five years (S. C., p. 30, lines 33 to 35) and that as far as the prosecutor knew, the Consolidated Laundries of Maryland were never a corporation of this State (S. C., p. 31, lines 19-20). The prosecutor stated in his testimony that there was a garnishment against his salary in the main office of the Consolidated Laundries in Maryland (S. C., p. 39, lines 20 to 30), and when examined by the Hon. Judge Ziegener on

an order of discovery, the prosecutor testified as follows:

That there was a garnishment against him at that time by the Elizabethport Banking Company, which company was located in Elizabeth, N. J., in the sum of \$50,000.00 and that he was paying ten per cent of his salary to the Elizabethport Banking Company and that he had received an order to pay that judgment and that his salary had been garnisheed by Miller & Miller of Newark in a Court of New York (S. C., p. 51, lines 22 to 40).

Judge Ziegener exercising extreme care asked the prosecutor as follows:

“Q. In the matter of the Elizabethport Banking Co. do you know whether that arrangement to pay them the sum of money was under an order of the court or an agreement between you and the Elizabethport Banking Co.? A. (By the Prosecutor) I think it was an order and then by agreement” (S. C., p. 52, lines 30 to 28).

It was after this statement that the Court directed the payment of Thirty Dollars per week.

There was absolutely no evidence submitted to the Court showing that there was an order in any Court within the jurisdiction of this state directing the prosecutor or the prosecutor's employer to pay any monies as of July 15th, 1930.

On September 9th, 1930, two months later, the prosecutor appeared before a Supreme Court Commissioner and at that time counsel for the prosecutor offered in evidence, a true copy of an installment execution entered in the New Jersey Supreme Court for Union County dated June 17th, 1929, wherein the prosecutor's employer was directed by Justice Case to pay ten per cent of the prosecutor's monthly salary.

Objection was made for the allowance of this evidence by counsel for respondent herein, unless there could be shown by the prosecutor that the said order was in full force and effect at the time, and further unless it was shown upon what person the said order was served, and we submit that these objections were of merit, assuming that the proceedings were legal, because the prosecutor in the hearing before the Supreme Court Commissioner on page 62 testified that the Consolidated Laundries was not a corporation of the State of New Jersey at that time, nor were they a corporation the year previous, and that if they were not a corporation of this State he would know (S. C., page 62, lines 16 to 25), and the prosecutor further testified that the Consolidated Laundries do not do business in the State of New Jersey (S. C., page 62, lines 25-26).

It is apparent therefore that from the prosecutor's own testimony that the Consolidated Laundries is not a corporation of the State of New Jersey nor is it a corporation doing business in the State of New Jersey, and that it did not at the time Justice Case signed the above referred to order. The order made by Justice Case on June 20th, 1929, directing the Consolidated Laundries to pay to the Elizabethport Banking Company ten per cent of the prosecutor's monthly salary, was not a good, valid and workable order on the day that it was entered, because the person directed to pay, namely, the Consolidated Laundries of Maryland, was not a corporation of this State, it was not a foreign corporation licensed to do business in this State nor had it a legal entity in this State, for it transacted no business, owned no property and was possessed of nothing within the jurisdiction of the Supreme Court of the State of New Jersey.

The prosecutor herein may pay ten per cent of his monthly salary to the Elizabethport Banking Company. If so, he is paying voluntarily. The Consolidated Laundries may be deducting ten per cent of his monthly wages because of the order received, signed by Justice Case feeling that they are respecting a tribunal of justice; in fact, they have no legal obligation to obey the same, not being a corporation of the State nor a foreign corporation licensed to do business. If we may assume for the sake of argument that the Consolidated Laundries ignored the order signed by Justice Case, they certainly could not be brought before the Supreme Court for contempt. How could they be served? What obligation has a corporation of Maryland having no affiliations with the State of New Jersey whatsoever? How could they be bound by an order of the Court of this State?

This Honorable Court may within its discretion take cognizance of the public records of this State. In the public records of this State on file with the Secretary of State's office at Trenton, there will be found the following:

That on May 28th, 1929, twenty days before Justice Case ordered the Consolidated Laundries Co. filed with the Secretary of State a certificate of surrender of corporate franchise demonstrating beyond question that the Consolidated Laundries Co. was not on the day that Justice Case signed the order, a person within the meaning of the law of this State, nor affiliated in any manner whatsoever as a foreign corporation.

The prosecutor in his brief submitted, on page 14, says:

“The amount involved is not the criterion and that the percentage of wages taken is the primary object to be followed.”

Your respondent respectfully contends that if the Courts were to assume such a position, grave injustice may follow, as in the case at bar. The testimony clearly shows that the prosecutor herein receives a yearly salary of \$16,800.00 (S. C., page 47, line 9) and that ten per cent of that monthly salary taken by his employer for the Elizabethport Banking Co. (S. C., page 51, lines 31 to 34) by a mere mathematical calculation it is evident that this prosecutor has, free of the Elizabethport Banking Company's levy, a salary of \$1,260.00 per month and the prosecutor herein would deprive your respondent from collecting a just and meritorious debt of \$316.30. Such an incident as this, your respondent respectfully urges, is the reason that prompted the Legislature to enact that part of the District Court Act which refers to execution.

### CONCLUSION.

**It is respectfully submitted that the order made by the First District Court of Jersey City on July 15th, 1930, directing the payments therein mentioned be permitted to stand.**

Respectfully submitted,

McCARTHY & McTAGUE,  
Attorneys for Defendants-Respondents.

FRANK P. McCARTHY,  
On Brief.

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Your respondent respectfully contends that if the Courts were to assume such a position, grave injustice may follow, as in the case at bar. The testimony demonstrates that the prosecutor herein receives a yearly salary of \$10,000 (S. C. page 45, line 3) and that one per cent of that monthly salary is paid by the respondent for the Elizabeth City, N. C. (S. C. page 51, lines 11 to 14) by a new municipality. Examining it is evident that this amount is less than of the Elizabeth City, N. C. (S. C. page 51, line 11) and the prosecutor herein was relieved from collecting a special assessment of \$100. Such an order would be manifestly unjust and respectfully argues, in the event of such an order, the Legislature to provide for the relief of the City, and which order is manifestly unjust.

### CONCLUSION

It is respectfully submitted that the order made by the First District Court of Jersey City on July 15th, 1930, directing the payments therein mentioned be permitted to stand.

Respectfully submitted,

McCahey & McCaus,  
Attorneys for Defendant's Respondents.

Edward P. McCaus,  
in Brief.