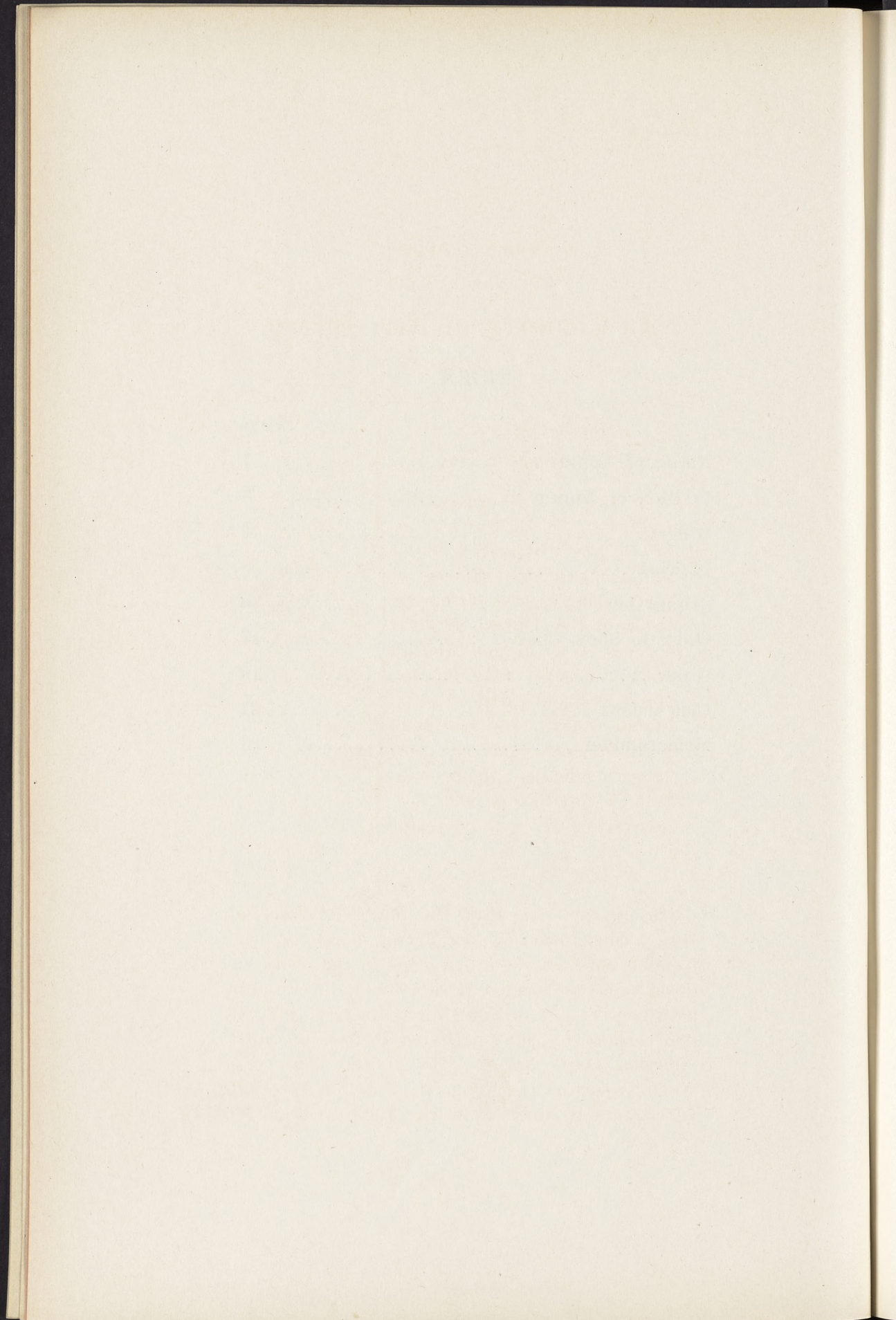


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Notice of Appeal.

Filed Sept. 19, 1930.

In Chancery of New Jersey.

50/164.

In the Matter		10
of the		
UNITED HATTERS OF NORTH AMERICA, LOCAL No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, and Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their Officers, Members, Associates, Agents, Representatives, Sympathizers and Employees, charged with contempt of Court.	On Petition, &c. Notice of Appeal.	20
		30

The petitioner, Hudson Hat Manufacturing Co., Inc., a corporation of New Jersey, hereby appeals from so much of the order made in the above entitled cause on August 12th, 1930, as directs said petitioner to pay to The United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, The Trimmers Union of the United Hatters of North America, Michael Green, Mi 40

Notice of Appeal.

10 chael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their costs to be taxed, including a counsel fee of One Hundred Dollars (\$100.00), which was allowed to the said defendants, to the Court of Errors and Appeals in the Last Resort in All Causes. Said order was made by the Chancellor on the advice of V. C. John Bigelow.

Dated, September 18th, 1930.

BERNARD MINDES,
Solicitor for and of Counsel with
Petitioner, Hudson Hat Manufacturing Co., Inc.

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

BERNARD MINDES,
Solicitor for and of Counsel with
Petitioner, Hudson Hat Manufacturing Co., Inc.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 18th day of September, 1930.

30 KRAEMER, SIEGLER & SIEGLER,
Solicitors for and of Counsel
with Defendants-Appellees.

Petition of Appeal.

Filed Nov. 7, 1930.

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

In the Matter

of the

UNITED HATTERS OF NORTH AMERICA, LOCAL No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, and Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Joe Gordano, their Officers, Members, Associates, Agents, Representatives, Sympathizers and Employees, charged with contempt of Court.

On Appeal.

Petition
of Appeal of
Hudson Hat
Manufacturing
Co., Inc.

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The petition of Hudson Hat Manufacturing Co., Inc., the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, dated August 12th, 1930, in this respect, to wit:

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That the said final order adjudges that petitioner pay to the United Hatters of North America, Local No. 13, the United Hatters of North America, Local No. 14, The United Hatters of North America, Michael Green, Michael F. Con-

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Petition of Appeal.

drow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, and The Trimmers Union of the Union of the United Hatters of North America, a counsel fee of One Hundred (\$100.00) Dollars, which was allowed to the said defendants.

10 And your petitioner humbly appeals from so much of said order as directs it to pay the said One Hundred Dollars, upon the ground that the same is erroneous for that :

(1) The Court of Chancery was without jurisdiction to make an order directing the petitioner to pay the said defendants the sum of One Hundred Dollars.

20 (2) The Court of Chancery was without jurisdiction to order petitioner to pay to said defendants, the sum of One Hundred Dollars, in that, the proceedings were criminal contempt proceedings, wherein the defendants were charged with contempt of the Court of Chancery in violating an order enjoining the said defendants to refrain from certain acts and conduct. And which said acts and conduct challenged and defied an order of the Court of Chancery made on July 11th, 1921 in the matter between Hudson Hat Manufacturing Co., a corporation, complainant, and the United Hatters of North America, and others, defendants.

30 (3) The Court of Chancery, without jurisdiction to order petitioner to pay said sum of One Hundred Dollars, in that, the proceedings upon which said order was predicated, attempts to penalize the petitioner for bringing to the attention of the Court of Chancery that its order had been wilfully disobeyed.

40 (4) The Court of Chancery was without juris-

Petition of Appeal.

diction to direct the petitioner to pay the said One Hundred Dollars, which is in its nature a penalty and fine imposed upon the petitioner for attempting to uphold the dignity and authority of the Court of Chancery of New Jersey, and is therefore against public policy.

Your petitioner, therefore, prays that the said order of the said Chancellor, may be reversed, set aside and for nothing holden, insofar as it orders petitioner to pay the sum of One Hundred Dollars as a counsel fee to the defendants hereinbefore named, and that your petitioner may have such further or other relief in the premises as to this Honorable Court shall seem meet. 10

BERNARD MINDES,
Solicitor for and of Counsel with 20
Appellant-Petitioner.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 9th day of October, 1930.

KRAEMER, SIEGLER & SIEGLER,
Solicitors for and of Counsel with
Defendants-Appellees. 30

40

Order.

Filed July 13, 1921.

IN CHANCERY OF NEW JERSEY.

50/164.

10	Between HUDSON HAT MANUFACTURING Co., a corporation, Complainant, and THE UNITED HATTERS OF NORTH AMERICA, and others, Defendants.	}	On Bill, &c. Order.
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20 The bill of complaint together with the affidavits
 attached in the above entitled cause having been
 filed and a rule to show cause why an injunction
 should not issue having been granted thereon, and
 the matter coming on to be heard on the return of
 the said rule to show cause, and affidavits on the
 part of the defendants having been read, the said
 complainant appearing by Messrs. Whiting &
 Moore, and the defendants by Messrs. Edwin C.
 30 Caffrey and Frank A. Boettner, and the arguments
 of counsel having been heard and considered, It is
 on this eleventh day of July, Nineteen hundred and
 twenty-one,

ORDERED that the United Hatters of North
 America, Local No. 13, The United Hatters of
 North America, Local No. 14, The United Hatters
 of North America, and the Trimmers Union of the
 United Hatters of North America, Michael Green,
 James Hearn, Benjamin Hollander, Christopher
 40 F. Donnigan, James V. Byrne, Miss Houston,

Order.

Mamie Haggan, Isidore Kaplan, Michael Makofsky, James Buckner, David Oleanor, Thomas Collins, Tillie Kiumick, Hannah Schultz, Anna Sinevoy, Frank DeNicholas, Frank Duch and Mamie Droogan, their officers, members, associates, agents, representatives, sympathizers, and employees, do desist and refrain from knowingly and intentionally causing or attempting to cause by threats, offers of money, payments or money, offers to pay expenses or by inducement or persuasion any employee of the complainant to quit complainant's service; from personal molestation of persons willing to be employed by complainant with intent to coerce such persons to refrain from entering such employment; from addressing against their wills persons willing to be employed by complainant, and thereby causing them personal annoyance, with a view to persuade them from entering such employment; from loitering or picketing in the streets or on the highways or public places near the premises of complainant with intent to procure the personal molestation or annoyance of persons employed or willing to be employed by complainant, and with a view to cause persons so employed to refrain from such employment; from entering the premises of the complainant against complainant's will with intent to interfere with complainant's business; from violence, threats of violence, molestations, abusive epithets, and annoying language, acts or conduct practiced upon or addressed to any persons without their consent with intent to coerce them to refrain from entering the employment of complainant, or to leave its employment; from attempting to cause any person employed by complainant to leave such employment by intimidating or annoying such employee by annoying language

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Order.

or conduct; from inducing, persuading or cause or attempting to induce, persuade or cause the employees of the complainant to quit their employment, until this Court shall make other order to the contrary.

E. R. WALKER,
C.

10 Respectfully advised,
JAMES F. FIELDER,
V. C.

Approved as to form,
FRANK A. BOETTNER,
EDWIN C. CAFFREY,
Sol'rs of Defts.

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Petition.

Filed July 24, 1930.

IN CHANCERY OF NEW JERSEY.

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

30 The petition of the Hudson Hat Manufacturing Company, Inc., a corporation of New Jersey, having its principal place of business and office in Nutley, New Jersey, respectfully shows that:

1. On July 11th, 1921 an Order was made by this Court in the matter between Hudson Hat Manufacturing Company, Inc., a corporation of New Jersey, complainant, and the United Hatters of North America, and others, defendants, and said order, amongst other things, provides as follows:

40 ORDERED that the United Hatters of North America, Local No. 13, The United Hatters of

Petition.

North America, Local No. 14, The United Hatters of North America, and the Trimmers Union of the United Hatters of North America, Michael Green, James Hearn, Benjamin Hollander, Christopher F. Donnigan, James V. Byrne, Miss Houston, Mamie Haggan, Isadore Kaplan, Michael Makofsky, James Buckner, David Oleanor, Thomas Collins, Tillie Kiumick, Hannah Schultz, Anna Sinevoy, Frank DeNicholas, Frank Duch and Mamie Droogan, their officers, members, associates, agents, representatives, sympathizers, and employees, do desist and refrain from knowingly and intentionally causing or attempting to cause by threats, offers of money, payments of money, offers to pay expenses or by inducement or persuasion any employee of the complainant to quit complainant's service; 10
 from personal molestation of persons willing to be employed by complainant with intent to coerce such persons to refrain from entering such employment; from addressing against their wills persons willing to be employed by complainant, and thereby causing them personal annoyance, with a view to persuade them from entering such employment; from loitering or picketing in the streets or on the highways or public places near the premises of complainant with intent to procure the personal molestation or annoyance of persons employed or willing to be employed by complainant, and with a view to cause persons so employed to refrain from such employment; from entering the premises of the complainant against complainants' will with intent to interfere with complainant's business; 20
 from violence, threats of violence, molestation, abusive epithets, and annoying language, acts or conduct practiced upon or addressed to any persons without their consent with intent to coerce them to 30
 40

Petition.

refrain from entering the employment of complainant, or to leave its employment; from attempting to cause any person employed by complainant to leave such employment by intimidating or annoying such employee by annoying language or conduct, from inducing, persuading or cause or attempting to induce, persuade or cause the employees of the complainant to quit their employment, until this Court shall make other order to the contrary.

2. Ever since the making of said order, and at the present time, your petitioner has continued in the business of the manufacturing of hats in Nutley, New Jersey, and that since the year 1909 it has been engaged in the Manufacture of hats, and during that time it has developed an extensive industry, and it employs about three hundred men and women, who occupy different positions, some of them being "sizers", "finishers" and "trimmers". The company's annual output is in excess of \$1,000,000.00, and it has many thousands of dollars invested in its factory including the land, building and machinery, and many more thousands of dollars invested in material, both raw, finished and partly finished, and has acquired a valuable good-will in the hat manufacturing industry.

3. There is now, and for many years last past has existed, an association known as The United Hatters of North America. It has a membership in excess of seven persons. This association is subdivided into a number of local branches, each having jurisdiction of the members of the association within the territory covered by the respective branches, but subject to the direction and control by said The United Hatters of North America, through its various officers and agents. One of

Petition.

said local associations is composed of finishers in Essex County and is known as Local No. 13. Another of said associations is composed of sizers in Essex County, and is known as Local No. 14. The third of said local associations is known as the trimmers union of The United Hatters of North America. The president of the National association is Michael Green, who resides in the City of Orange, County of Essex and State of New Jersey, and its general agent is Michael F. Condrow, who has his office in the Bible House, in the City of New York. Frank Stabulsky is the Vice-President of Local No. 13, and Patsy Luzzi and Jimmie Luzzi and Joe Gordano are members of one of said local unions. 10

Each of said local associations consists of more than seven persons, and each has a recognized name, namely, the said respective names hereinbefore mentioned. 20

4. The United Hatters of North America, as petitioner, is informed and believes, and charges it to be a fact, is acting in connection with the acts herein charged and is represented in the territory comprising the County of Essex, New Jersey, by said local associations. The persons in charge are Michael Green, Frank Stabulsky, Michael F. Condrow, Patsy Luzzi, Jimmie Luzzie and Joe Gordano, and they are assisted by officers and members of said associations herein named, and of said local associations herein named. 30

5. From July 11th, 1921 petitioner's relations with its employees were peaceable and petitioner's factory was known as an open shop, the fact being that there were no complaint from the employees as to their working conditions, and petitioner has 40

Petition.

maintained the same working conditions, and pays the same or higher wages.

6. Since July 20th, 1930, the United Hatters, under the direction of The United Hatters of North America, under Local No. 13 and Local No. 14, and the Trimmers Union have maintained a system
10 of picketing. The pickets at first were comparatively few in number, but have increased in size daily, and are mostly Union Members, with the exception of two or three, who were formerly employed by petitioner. Michael Green, Michael F. Con-
drow, Frank Stabulsky, Patsy Luzzi, Jimmie Luzzi and Joe Gordano and others of the officers, mem-
bers, employees and sympathizers, have taken their
20 position along the streets and along the sidewalks near and in front of petitioner's factory. They have daily gathered in the morning at the time petitioner's employees come to work, and they have remained in the vicinity for the entire day until the plant closes in the evening, extending their ac-
tivities throughout the neighborhood of the plant and at the points where the employees take their
trolley cars or jitney buses to and from their
homes. They have daily patrolled the neighbor-
hood of the plant and accosted petitioner's work-
30 men and workingwomen as they come to and from petitioner's plant, and they have also 'phoned the homes of various workmen of petitioner, and have even gone to the homes of various workmen of the petitioner, urging that they leave petitioner's em-
ploy, and denounce workmen and workingwomen of petitioner, as scabs, calling them vile names and making repeated threats of injury, and have even
gone so far as to threaten to kill certain of pe-
40 titioner's workmen if they continue to work for pe-

Petition.

petitioner or remain in its employ. They have been persistently importuning following and dogging the workmen and workingwomen of petitioner, and are intimidating the workmen and workingwomen of petitioner by their numbers and threats, and by show of force, and by other sinister aspects. Specific instances are set forth in the affidavits hereto attached. 10

7. On July 23rd, 1930 the number of pickets was very largely increased, and their conduct became more annoying and persistent. They have since that time, parading two by two, or more, accompanied workmen and workingwomen employed by petitioner, from the trolley cars and jitney buses to petitioners' factory, threatening to injure them, and in two instances have gone so far as to threaten to kill certain of petitioner's workmen. They have gathered daily in front of the windows of petitioner's factory, overlooking Washington Avenue, and staring at the workers for hours at a time, calling them scabs and other vile names. For the last two days many of the pickets have worn cards printed in large letters indicating that there was a strike in petitioner's plant. They walk around petitioner's factory bearing these placards. They are particularly active at morning, noon and night as employees are coming to and from their work. 20 30

8. Petitioner is informed and believes that all of the pickets aforesaid are members of The United Hatters of North America, and one or another of its local associations, and that they are receiving pay under the name of "strike benefits" for acting as pickets as aforesaid, and for obeying the direc- 40

Petition.

tions and instructions of said associations and the officers thereof.

9. Petitioner's employees have been put in fear of bodily harm because of said picketing, persistently importuning, following and talking and threats of actual violence as set forth in the attached affidavits. As a result thereof petitioner's employees are so frightened that it is necessary to take them from the plant in private owned automobiles in order to avoid threats and intimidations of the pickets. There is no strike at petitioner's plant, but the employees are bordering under a state of hysteria because of the actions of the pickets and their officers and agents.

10. The said defendants herein named, individually and collectively, and as members of the United Hatters of North America, Locals Nos. 13 and 14 and the Trimmers Union have conspired and combined, and have entered into a combination and conspiracy to prevent, by the acts aforesaid, obedience and respect to the order of this court as hereinbefore mentioned.

11. The defendants herein named are attempting to have a strike at the factory of the petitioner, although no strike exists, and are using unlawful means to accomplish their purpose.

12. The defendants and their associates intend to continue the unlawful acts complained of, and to carry into execution the several threats made by them and their associates. If the said defendants and their associates are permitted to further continue the said unlawful acts, the petitioner will be further irreparably injured and damaged, and many workmen and workingwomen who desire to work

Petition.

and are willing and able to work, and whom complainant is anxious to employ, will be kept out of employment.

Petitioner prays that the said defendants, their officers, agents, members, associates, representatives and employees be enjoined and ordered to respect and obey the order of this Court, made on July 11th, 1921, and that petitioner may have such further relief as may be proper, equitable and just, and that Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi and Joe Gordano may be punished for their contempt in willfully violating the terms of the aforesaid decree of this Court. 10

BERNARD MINDES,
Solicitor of Petitioner. 20

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Stipulation.

IN CHANCERY OF NEW JERSEY.

In the Matter
of the
10 UNITED HATTERS OF NORTH
AMERICA, LOCAL No. 13, and
others, charged with contempt
of Court. } Stipulation.

20 It is hereby stipulated and agreed between the
counsel for the respective parties hereto, that the
affidavits attached to the petition for contempt be
not printed.

BERNARD MINDES,
Solicitor for and of Counsel for
Appellant-Petitioner.

KRAEMER, SIEGLER & SIEGLER,
Solicitors for and of Counsel for
Defendants-Appellees.

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Order to Show Cause.

Filed July 24, 1930.

IN CHANCERY OF NEW JERSEY.

In the Matter

of the

UNITED HATTERS OF NORTH AMERICA, LOCAL No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, and Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their Officers, Members, Associates, Agents, Representatives, Sympathizers and Employees, charged with contempt of Court.

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Order to Show Cause.

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A petition and affidavits having been filed alleging amongst other things, that the parties herein named, The United Hatters of North America, Local No. 13, The United Hatters of North America, Local No. 14, The United Hatters of North America, The Trimmers Union of the United Hatters of North America, Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, have violated and disobeyed an order of this court made on July 11th, 1921 in the Matter between Hudson Hat Manufacturing Company, Inc., a corporation, complainant, and The

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Order to Show Cause.

United Hatters of North America, and others defendants, it is, on this 24th day of July, 1930,

ORDERED, that The United Hatters of North America, Local No. 13, The United Hatters of North America, Local No. 14, The United Hatters of North America, The Trimmers Union of the
 10 United Hatters of North America, Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, show cause before the Chancellor on the 29th day of July, 1930, at the Chancery Chambers in the Industrial Building, No. 1060 Broad Street, Newark, New Jersey, at 10:30 A. M., or as soon thereafter as counsel may be heard, why the said parties shall not be adjudged in contempt of this Court.

20 IT IS FURTHER ORDERED, that true copies of this order and the petition and affidavits by which this Order to Show Cause is allowed, and endorsed as true copies by the Solicitor of the Petitioner, be served upon each one of the defendants herein named within two days of the date hereof.

EDWIN ROBERT WALKER,
 C.

Respectfully advised,
 30 JOHN O. BIGELOW,
 V. C.

Order.

Filed Aug. 15, 1930.

IN CHANCERY OF NEW JERSEY.

In the Matter

of the

UNITED HATTERS OF NORTH AMERICA, LOCAL No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, and Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their Officers, Members, Associates, Agents, Representatives, Sympathizers and Employees, charged with contempt of Court.

} Order.

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The order to show cause herein coming on to be heard in the presence of Bernard Mindes, solicitor for the petitioner, and Kraemer, Siegler & Siegler (Joseph Kraemer) solicitors for the defendants, and the Court having heard the testimony of the witnesses produced in behalf of the petitioner, and being of the opinion that the testimony was insufficient to adjudge the defendants guilty of contempt, it is, on this 12th day of August, 1930,

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ORDERED, that the said order to show cause be and the same is hereby discharged. And it is further

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Order.

10 ORDERED, that the petitioner, Hudson Hat Manufacturing Co., Inc., a corporation of New Jersey, pay to the defendants, The United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, The Trimmers Union of the United Hatters of North America, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their costs to be taxed, including a counsel fee of One Hundred (\$100.00) Dollars which is hereby allowed to the said defendants, within fifteen days after the service upon it of true, but uncertified copies of this order, and of said taxed costs, and that in default of such payment execution issue therefor, according to the practice of this Court.

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E. R. WALKER,
C.

Respectfully advised,
J. O. BIGELOW,
V. C.

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Conclusions.

Filed Feb. 2, 1931.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p>UNITED HATTERS OF NORTH AMERICA, and others, charged with contempt.</p>	}	<p>On Petition, &c. Conclusions.</p>	10
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BERNARD MINDES, ESQ., for the Petitioner.
JOSEPH KRAEMER, ESQ., for the Defendants. 20

JOHN O. BIGELOW, V. C.

This is a criminal trial. The mere fact that the case is tried before a single judge does not alter the fundamental principles that apply when the defendants are tried on an indictment found by a grand jury. The defendants are presumed to be innocent and the burden of proof is on the prosecutor of showing the truth of every material allegation of the charge against them. To be guilty of contempt of court it is essential that the contemner be aware of the order that he is charged with violating. There has been no attempt to prove that any of the defendants had any knowledge of the order they are charged with violating. There is nothing in the record of this case or the preceding case, if I could refer to the preceding case, to show that the restraining order was ever served on any of the defendants. There is nothing to show that it has ever been brought to the atten- 30 40

Conclusions.

tion of the defendants in the present proceedings. There is sufficient evidence here that some of the present defendants violated the terms of the original order if they were included within its scope. The acts which have been shown in the testimony to have been committed by Patsy and Jimmie Luzzi and Joe Gordano and perhaps Frank Stabulski violate the terms of the order, but they cannot be found guilty because it is not shown that they had notice of the order. The defendants United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, the Trimmers Union of the United Hatters of North America, Michael Green and Michael F. Condrow are not shown to have had any connection with the disorders of which the petitioner complains, or to be guilty in any respect of violation of the order. The order to show cause will be discharged.

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Memorandum.

Filed March 11, 1931.

IN CHANCERY OF NEW JERSEY.

In the Matter
of the
UNITED HATTERS OF NORTH
AMERICA, LOCAL No. 13, and
others, charged with contempt
of Court.

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March 11, 1931.

MR. BERNARD MINDES, for the Petitioner 20
Hudson Hat Manufacturing Co.
Messrs. KRAEMER, SIEGLER & SIEGLER,
(JOSEPH KRAEMER), for the Defendants.

(This memorandum is not to be published in the
official or unofficial reports).

MEMORANDUM.

30

BIGELOW, V. C.

On petition of the Hudson Hat Manufacturing
Company the defendants were ordered to show
cause why they should not be adjudged guilty of
contempt and punished therefor. Upon the return
of the order, the petitioner, through its counsel,
presented evidence in support of its petition. This
evidence fell far short of establishing the guilt of 40

Memorandum.

any of the defendants and so the order to show cause was discharged with costs, including a counsel fee of \$100 to be paid by petitioner to the defendants. Counsel have informed me that petitioner has appealed from the allowance of a counsel fee on the ground that this Court was without
10 inasmuch as this was a criminal contempt proceeding. In view of the appeal, it seems proper that I should state briefly my understanding of the law relative to the allowance of a counsel fee.

The Chancery Act of 1902, Sec. 91, as amended P. L. 1910, p. 427, C. S. 445, provides "in any cause, matter or proceeding in the Court of Chancery, the Chancellor may make such allowance by way of
20 counsel fee to the party or parties obtaining the order or decree as shall seem to him to be reasonable and proper, and shall direct which of the parties shall pay such allowances." This enactment seems sufficiently broad to include the instant case but petitioner contends that it should be restricted by interpretation so as to exclude a criminal contempt proceeding. Reliance is placed on the rule governing prosecutions in the criminal courts that an acquittal does not carry costs or counsel fee.
30 There are, however, several reasons for this, none of which applies to the present case. First, no statute authorizes a discretionary counsel fee to either party in a criminal court as against another party. Second, no statute, by any reasonable construction, authorizes a judgment for costs in favor of a defendant in a criminal trial court. Third, in the ordinary criminal prosecution, the only parties are the defendant and the State, and costs are not adjudged against the State in the absence of
40 express legislative sanction. *Kearney v. Board*, 103

Memorandum.

N. J. L. 541, 138 A. 569. The Certiorari Act, P. L. 1903, p. 343, Sec. 10, C. S. 405, and an Act concerning costs, Rev. p. 411, Sections 11 to 13, C. S. 2296, contain language sufficiently broad to warrant the recovery of costs from the State on certiorari and on appeal, were the construction not restricted by the rule last above mentioned. The State, I take it, is a party to every criminal contempt proceeding, although an unnamed and usually inactive party. I see no reason why the State through the attorney general could not conduct the prosecution of a criminal contempt in this Court, but even if it should do so, it would not be liable to costs. 10

The petitioner, the Hudson Hat Manufacturing Company, is also a party to the proceeding. On no other basis was its counsel permitted to appear and prosecute. It is not protected by the rule which protects the State against costs. Although costs are not usually allowed to the defendant and against the prosecutor in a criminal contempt proceeding, yet they sometimes are allowed. *Magenis v. Parkhurst*, 4 N. J. Eq. 432, 436. *McDermott v. State*, 10 N. J. L. 63. *O'Rourke v. Cleveland*, 49 N. J. Eq. 577, 25 A. 367. 20

I have treated of costs somewhat at length because costs and counsel fees are governed by similar principles. They are both creatures of statutes. In the interpretation of the statutes, the State but not a private party is protected. In *O'Rourke v. Cleveland* it was held that a counsel fee could not be adjudged against a defendant in a contempt proceeding, but the statute has been amended and broadened since that time so that the contrary was held in *Hilton v. Hilton*, 89 N. J. Eq. 422, 105 A. 65. It seems clear to me that 30 40

Memorandum.

the allowance of a counsel fee to a successful defendant in criminal contempt is within the discretion of the court.

The petitioner subjected a number of workmen and their Unions to the humiliation attendant upon a criminal charge.

10 It burdened them with the expense of defending against this charge. It failed at the hearing to make out even a prima facie case and so the defendants were discharged without being called upon to present their defense. Counsel for petitioner suggested that its motive in bringing this proceeding was to vindicate the dignity and authority of the Court and therefore that the Court should exercise its discretion in favor of the petitioner. But the principal motive of the petitioner was, un-
20 doubtedly, the protection of its own property—a worthy enough motive but the one which ordinarily moves a party in private litigation. Under these circumstances, it seemed to me proper to compel the petitioner to pay a part of the defendant's expenses and therefore I allowed a counsel fee of \$100.00.

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8
NEW JERSEY COURT OF ERRORS
AND APPEALS

In the matter of the

UNITED HATTERS OF NORTH
AMERICA, Local No. 13,
et als, Charged with con-
tempt of Court.

*On Appeal
from Court
of Chancery*

Brief of Kraemer, Siegler & Siegler, Esquires,
(Joseph Kraemer, Esquire on the brief) for
the Appellees.

STATEMENT.

The appellant, Hudson Hat Manufacturing Company, Inc. filed a petition in the Court of Chancery charging some of the individual appellees with violating the preliminary injunction of the Court of Chancery, allowed on July 11th, 1921, in the suit of the Hudson Hat Manufacturing Company, Inc. against the United Hatters of North America, et als, and praying among other things that the said defendants be adjudged guilty of contempt of Court. Upon the return of the Order to Show Cause, testimony was taken in open court and the defendants found not guilty; an Order entered discharging the Order to Show Cause and allowing the defendants a counsel fee of One Hundred (\$100.00) Dollars, besides costs. The appellant does not appeal from this Order on the merits, but only from that part making the allowance of One Hundred (\$100.00) Dollars counsel fee and costs.

ARGUMENT.

The appellant contends that the proceedings were those in the nature of a criminal contempt, and in such proceedings counsel fee and costs cannot be allowed to the prevailing party.

The memorandum filed by the learned Vice Chancellor, (S. C. Page 21) contains all of the precedents in point. The appellant relies upon those cases and so do the appellees.

In *MAGENNIS v. PARKHURST*, 4 Equity 433, the proceedings were for criminal contempt. The defendant was acquitted and the Chancellor held (page 436):—

“ This being in the nature of a criminal proceeding, costs are not usually allowed and should not be in this case.”

The Chancellor then gave his reason for not allowing costs in this case, as follows:—

“ The defendant, by working at all in the stream, exposed himself to censure. A more prudent course would have been, to ask a modification of the injunction, or such a construction of its terms as would have enabled him to do the work he wished, without the hazardous experiment which he has made.

The complainant had reason to think he had cause of complaint, although he may have mistaken the cause of the injury of which he complained. He is not to be regarded as making a vexatious and wholly ill-grounded complaint, although the strong and aggravated case represented in the depositions on which the order for attachment was founded, is not made out on the present hearing.”

It is quite evident that had the Chancellor concluded that the petitioner had made a vexatious and wholly ill-grounded complaint, costs would have been allowed to the defendant.

In O'ROUKE v. CLEVELAND, 49 Equity, 577, 25 Atl. 367, also a criminal contempt proceedings, the defendant was found guilty and ordered to pay the costs of the complaint and a counsel fee of Two Hundred Fifty (\$250.00) Dollars. On an appeal, this order was reversed, and Mr. Justice Reed, speaking for the Court of Errors and Appeals, held:—

“ But we are of the opinion that the order thereupon made cannot stand. In the first place, we can find no authority *in this state* for the imposition of counsel fees upon a person adjudged to be in contempt.”

It is evident that the asserted lack of authority is not inherent in the nature of the criminal contempt proceedings, but based upon a lack of authority in the State of New Jersey. In the latter case, as well as in MAGENNIS v. PARKHURST, *supra*, 4 Equity, 433, REX v. PLUMKET, 3 Burrows 1329, is quoted with the following comment:—

“ The Court, while declaring it to be contrary to their general practice, yet in that instance gave costs.”

Therefore, the general practice of the Court of Chancery in England not to allow costs in criminal contempt proceedings, was due to the exercise of discretion and not to any lack of power. The inference is clear, that in a proper case, the Court did allow costs.

Mr. Justice Reed, speaking for the Court of Errors and Appeals in O'ROUKE v. CLEVELAND,

49 Equity, 577, 25 Atl. 367, reviews the authorities and refers to two cases in New York, DAVIS v. STURTEVANT, 4 Duer, 148 and CLARKE v. BARNES, 76 N. Y. 301, in which counsel fees and costs were imposed upon the guilty defendant, based upon a Statute of New York, which permitted the Court to impose upon a defendant the costs and expenses, and counsel fees was held to be embraced within the term "expenses".

The uncertainty in this State as to the authority of the Court of Chancery to impose costs and counsel fees in a criminal contempt proceedings was settled by the Chancery Act of 1902, as amended in 1910, and as now appears in Section 91 of the Chancery Act, 1 Compiled Statutes, page 445; the pertinent part is as follows:—

" In any cause, matter or proceeding in the Court of Chancery, the Chancellor may make such allowances by way of counsel fee to the party or parties obtaining the order or decree as shall seem to him to be reasonable and proper, and shall direct which of the parties shall pay such allowances - - - - "

The language is all embracing. It includes any cause, matter or proceeding and provides that the Chancellor "shall direct which of the parties shall pay such allowances".

Under the authority given by this act, Vice-Chancellor Lane in HILTON v. HILTON, 89 Equity 417, 105 Atl. 65, allowed counsel fee and costs in the criminal contempt proceedings, and referring to the Act, says:—

" Considering this legislation, as contrasted with the legislation as it previously existed, it seems to me to be clear that the clear intent was to vest the Chancellor

with jurisdiction to allow counsel fees in every proceeding of every kind and description that might be brought in the Court of Chancery."

This order was reviewed on appeal to this Court and affirmed, but the question of counsel fees and costs was not considered. *HILTON v. HILTON*, 90 Equity 564, 107 Atl. 263.

In re: *HAND*, 89 Equity 469, 105 Atl. 594, the respondent was found guilty of criminal contempt by Vice-Chancellor Lane, fined One Hundred Fifty (\$150.00) Dollars, to be paid to the State of New Jersey, and the costs of the proceedings, including counsel fee, "under the authority of the case of *HILTON v. HILTON*, 105 Atl. not yet recorded." It does not appear that an appeal was taken in this case.

It is now settled that under the Act of 1902, as amended in 1910 quoted above, the Court of Chancery has the authority to allow counsel fees as well as costs in any case, matter or proceeding, and that includes a criminal contempt proceedings, and also that the Chancellor may direct which of the parties shall pay such an allowance.

The petition in the present case (S. C. p. 15) prays that:—

"Michael Greene, Michael F. Condron, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi and Joe Gordano, be punished for their contempt."

The United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, the United Hatters of North America, and the Trimmers Union of the United Hatters of North America, were not named in the prayer of the petition, but were named in the order to

show cause and so brought before the Court and compelled to defend themselves in the contempt proceedings. The learned Vice-Chancellor found all of the defendants not guilty, and in his conclusions, (S. C. p. 22) held:—

“ The acts which have been shown in the testimony to have been committed by Patsy and Jimmie Luzzi and Joe Gordano and perhaps Frank Stabulski violate the terms of the order, but they cannot be found guilty because it is not shown that they had notice of the order. The defendants, United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, The Trimmers Union of the United Hatters of North America, Michael Green and Michael F. Condrow are not shown to have had any connection with the disorders of which the petitioner complains, or to be guilty in any respect of violation of the order. The order to show cause will be discharged.”

Certainly as to the United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, the United Hatters of North America, and the Trimmers Union of the United Hatters of North America, the proceedings instituted by the petition were vexatious and the allowance of a counsel fee justified.

But there is another feature of this case not mentioned in the appellant's brief deserving, however, of consideration. The proceedings in the Court below were entitled as in a criminal contempt, except for the addition to the names of the defendants of the following, “their officers, members, associates, agents, representatives, sympathizers and employees, charged with contempt of Court.” (S. C. page 1.)

Criminal complaint cannot be made against such generally classed and otherwise unidentified persons; and the prayer of the petition in part is (S. C. p. 15):—

“ That the said defendants, their officers, agents, members, associates, representatives and employees be enjoined and ordered to respect and obey the order of this Court, made on July 11th, 1921, and that petitioner may have such further relief as may be proper, equitable and just——.”

This prayer resembles very much the one contained in the petition in the famous case of SAMUEL GOMPERS v. BUCK'S STOVE AND RANGE CO., in the United States Supreme Court, reported in 221 U. S. Supreme Court Reports, page 418, 55 Law Edition, page 797; and dealing with this feature of the petition, Mr. Justice Lamar, who delivered the opinion of the Court, held (221 U. S. Supreme Court Reports, page 448):—

“ We have already shown that in both classes of cases there must be allegation and proof that the defendant was guilty of contempt, and a prayer that he be punished. The classification, then depends upon the question as to whether the punishment is punitive, in vindication of the court's authority, or whether it is remedial, by way of a coercive imprisonment, or a compensatory fine, payable to the complainant. *Bearing these distinction in mind, the prayer of the petition is significant and determinative.* After setting out in detail the acts of alleged disobedience, the petition closes with the following prayers:— (1) ‘That the defendants show cause why they should not be adjudged in contempt of court and be punished for the same’ and

(2) *'that petitioner may have such other and further relief as the nature of its case may require.'* (Italics ours.)

'Its case', not the government's case. 'That petitioner may have relief' not that the court's authority may be vindicated. The Buck's Stove & Range Company was not asserting the rights of the public, but seeking *'such other and further relief as the nature of its case may require'*. If it had asked that the defendants be forced to pay a fine to the government, or be punished by confinement in jail, there could have been no doubt that punishment pure and simple was sought.

On the other hand, if it had prayed that the court impose a fine payable to the Buck's Stove & Range Company, the language would have left no doubt that remedial punishment was sought. It is not different in principle, if, instead of praying specifically for a fine payable to itself, it asks generally for *'such relief as the nature of its case may require'*. In either event such a prayer was appropriate to a civil proceeding, and under it the court could have granted that form of relief to which the petitioner was entitled." (italics ours.)

In the present case, we find that the petition prays:—

" that the said defendants, their officers, agents, members, associates, representatives and employees be enjoined and ordered to respect and obey the order of this Court, made on July 11th, 1921, and that petitioner may have such further relief as may be proper, equitable and just."

This, the United States Supreme Court held to be the proper prayer in a civil contempt proceeding and inconsistent with the proceedings for a criminal contempt. The petition further prays:—

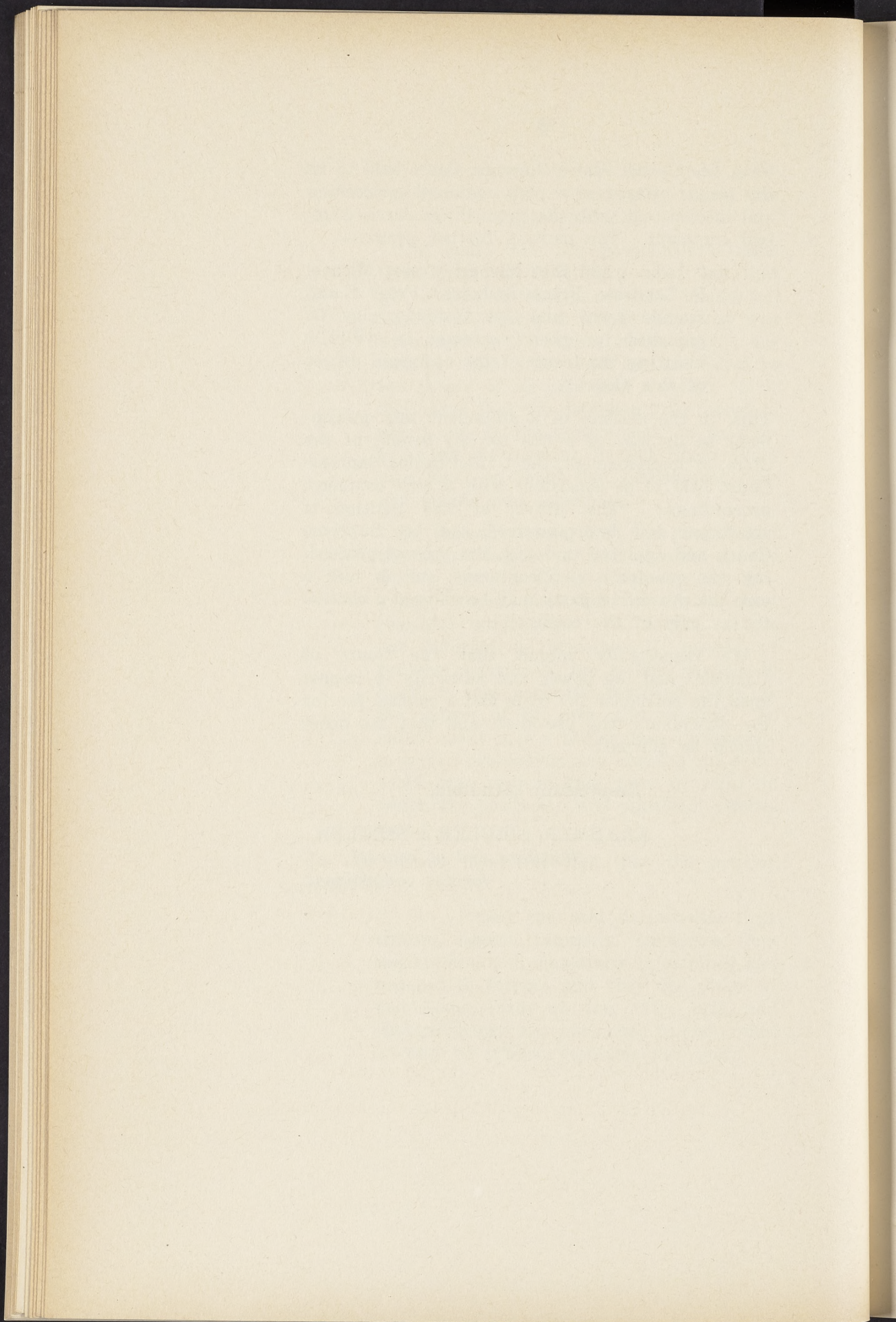
“ and that Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi and Joe Gordano may be punished for their contempt in willfully violating the terms of the aforesaid decree of this Court.”

This, in the absence of a statement that punishment be by way of a fine for the benefit of the State, or imprisonment, the United States Supreme Court held to be consistent with a civil contempt proceedings. “The prayer of the petition is significant and determinative”, said the Supreme Court, and applying that test, the present proceeding was one for a civil contempt; and in such a case the prevailing party may be allowed a counsel fee as part of the costs.

We respectfully submit that the Court of Chancery had the power and authority to impose upon the petitioner the costs and a counsel fee for the defendants who prevailed, and that the order should be affirmed.

Respectfully submitted,

KRAEMER, SIEGLER & SIEGLER,
Solicitors and of counsel
for the complainant.



8

New Jersey Court of Errors and Appeals

In the Matter of the UNITED HATTERS OF NORTH AMER- ICA, <i>et als.</i> , Defendants-Respondents.	}	On Bill, &c. On Appeal from the Court of Chancery.
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BRIEF OF THE PETITIONER-APPELLANT, HUDSON HAT MANUFACTURING CO., INC.

Statement.

This is an appeal from an order made August 12th, 1930 and filed August 15th, 1930, wherein the petitioner-appellant, Hudson Hat Manufacturing Co., Inc., was ordered to pay to the defendants, The United Hatters of North America, Local No. 13, The United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, and Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, and Joe Gordano, their costs to be taxed including a counsel fee of One Hundred (\$100.00) Dollars, which was allowed to the said defendants.

The order was in the following terms:

ORDERED, that the said order to show cause

be and the same is hereby discharged. And it is further

ORDERED, that the petitioner, Hudson Hat Manufacturing Co., Inc., a corporation of New Jersey, pay to the defendants, The United Hatters of North America, Local No. 13, United Hatters of North America, Local No. 14, The United Hatters of North America, The Trimmers Union of the United Hatters of North America, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi, Joe Gordano, their costs to be taxed, including a counsel fee of One Hundred (\$100.00) Dollars which is hereby allowed to the said defendants, within fifteen days after the service upon it of true, but uncertified copies of this order, and of said taxed costs, and that in default of such payment execution issue therefor, according to the practice of this Court.

A brief resume of the facts leading to the order appealed from, is subjoined.

On July 11th, 1921, the Chancellor, on the advice of Vice Chancellor James F. Fielder, made an order in the matter between Hudson Hat Manufacturing Co., Inc., the complainant, and The United Hatters of North America, and others, defendants, wherein The United Hatters of North America, Local No. 13, The United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, their officers, members, associates, agents, representatives, sympathizers and employees, were ordered to desist and refrain from threats, or by persuasion to induce any employee of the complainant to quit complainant's service; from personal molestation of persons willing to be employed by complainant with intent to

coerce such persons to refrain from entering such employment; from addressing against their wills persons willing to be employed by complainant, and thereby causing them personal annoyance, with a view to persuade them from entering such employment; from loitering or picketing in the streets or on the highways or public places near the premises of complainant with intent to procure the personal molestation or annoyance of persons employed or willing to be employed by complainant, and with a view to cause persons so employed to refrain from such employment.

On July 24th, 1930, the Hudson Hat Manufacturing Co., Inc., by petition and affidavits, brought to the attention of the Court of Chancery the fact that the defendants, The United Hatters of North America, et als., have violated and disobeyed the order of the Court of Chancery made on July 11th, 1921. Upon the petition and affidavits of the Hudson Hat Manufacturing Co., Inc., an Order to Show Cause was made by the Chancellor on the advice of Vice Chancellor John Bigelow directing The United Hatters of North America, Local No. 13, The United Hatters of North America, Local No. 14, The United Hatters of North America, the Trimmers Union of the United Hatters of North America, Michael Green, Michael F. Condrow, Frank Stabulski, Patsy Luzzi, Jimmie Luzzi and Joe Gordano, to show cause before the Chancellor on the 29th day of July, 1930, at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, why the said persons named shall not be adjudged in contempt of this Court, and punished accordingly. The said Order to Show Cause was continued to August 12th, 1930, and testimony was taken in open court concerning the alleged contempt of the persons herein named. Vice Chancellor John Bigelow, who heard the testimony, de-

cided that since the defendants were charged with the criminal contempt, he was not satisfied that the evidence adduced was sufficient to find the defendants guilty of the contempt charged, and he thereupon dismissed the Order to Show Cause, and ordered that costs be taxed and a counsel fee of One Hundred (\$100.00) Dollars be allowed to the defendants charged with contempt. And from that part of the order, which ordered that a counsel fee of One Hundred Dollars be allowed to the defendants, is the subject matter of this appeal.

POINT I.

The defendants were charged with a criminal contempt.

“Criminal contempts, as the term implies, are offenses against organized society, which, although they may arise in the course of private litigation, are not part thereof, but, like other criminal offenses, raise an issue between the public and the accused * * * * It is not essential that the proceeding should be instituted by the Court of its own motion; this matter may be, and in actual practice, generally is brought to the attention of the Court by complainant’s counsel, who, in such case, acts as *amicus curiae*” *Staley vs. South Jersey Realty Co.*, 83 Eq. 300.

POINT II.

The Court of Chancery was without jurisdiction to make an order directing petitioner-appellant to pay a counsel fee of One Hundred (\$100.00) Dollars.

“Chancellor Haines in *Magennis vs. Parkhurst*, 4 Eq. 434, rules that even costs in a proceeding for violating an injunction, should not, as a general rule, be allowed to a defendant, who successfully purged his contempt, because the proceeding was criminal in its nature. * * * * And the award of costs at the discretion of the Court, is settled practice in Courts of Equity in contempt proceedings. But I find no case in which counsel fees have been awarded to a successful litigant in contempt proceedings, aside from two cases in the Courts of the State of New York, and one case in the Federal Court, in the Northern District of New York. In the State of New York, however, counsel fees are awarded under a Statute which permits the Court to impose upon a defendant in contempt the costs and expenses in contempt proceedings. * * * * The power to award a counsel fee is purely Statutory. No legislative authority in this state can be discovered, which permits it in this class of proceeding.” *O'Rourke vs. Cleveland*, 49 Eq. 577.

Since the decision of the Court of Errors and Appeals in *O'Rourke vs. Cleveland*, *supra*, the Chancery Act was modified by Section 91, 1 Comp. Statutes, 1910, p. 445 (P. L. 1910, p. 427).

In any cause, matter or proceeding in the Court of Chancery, the Chancellor may make such allowances by way of counsel fees to the party or parties obtaining the Order or Decree as shall seem to him

to be reasonable and proper, and shall direct which of the parties shall pay such allowances. The Chancellor may provide for the inclusion of such allowances in the taxable costs, or may provide for their collection in such other manner as is agreeable to the practice of the Court.

This amendment to the Chancery Act does not give the Chancellor the authority in criminal contempt proceedings to impose a penalty upon one who, as *amicus curiae*, has in good faith, attempted to uphold the dignity and authority of the Court of Chancery. This amendment to the Chancery Act was intended to authorize the Chancellor to impose a counsel fee against a defendant in contempt proceedings as part of the punishment of the defendant.

In *Hilton vs. Hilton*, 89 Eq. 417, the Court said, "Application is now made to include in the costs an allowance for counsel fees. In *O'Rourke vs. Cleveland*, 49 Eq. 577; 25 Atl. 367; 31 Am. St. Rep. 719, the Court of Errors and Appeals held that this Court could not impose a counsel fee upon a party held in contempt as a punishment. It rested its determination upon the absence in this state of legislative authority to award counsel fees in such cases indicating that the power to award a counsel fee is purely statutory. Subsequent to the determination of that case (1892) Sec. 91 of an act concerning the Court of Chancery (1 Comp. St. of N. J., p. 445) was amended. * * * I conclude, therefore, that counsel fees may be allowed against a respondent adjudged guilty of contempt and included in the costs."

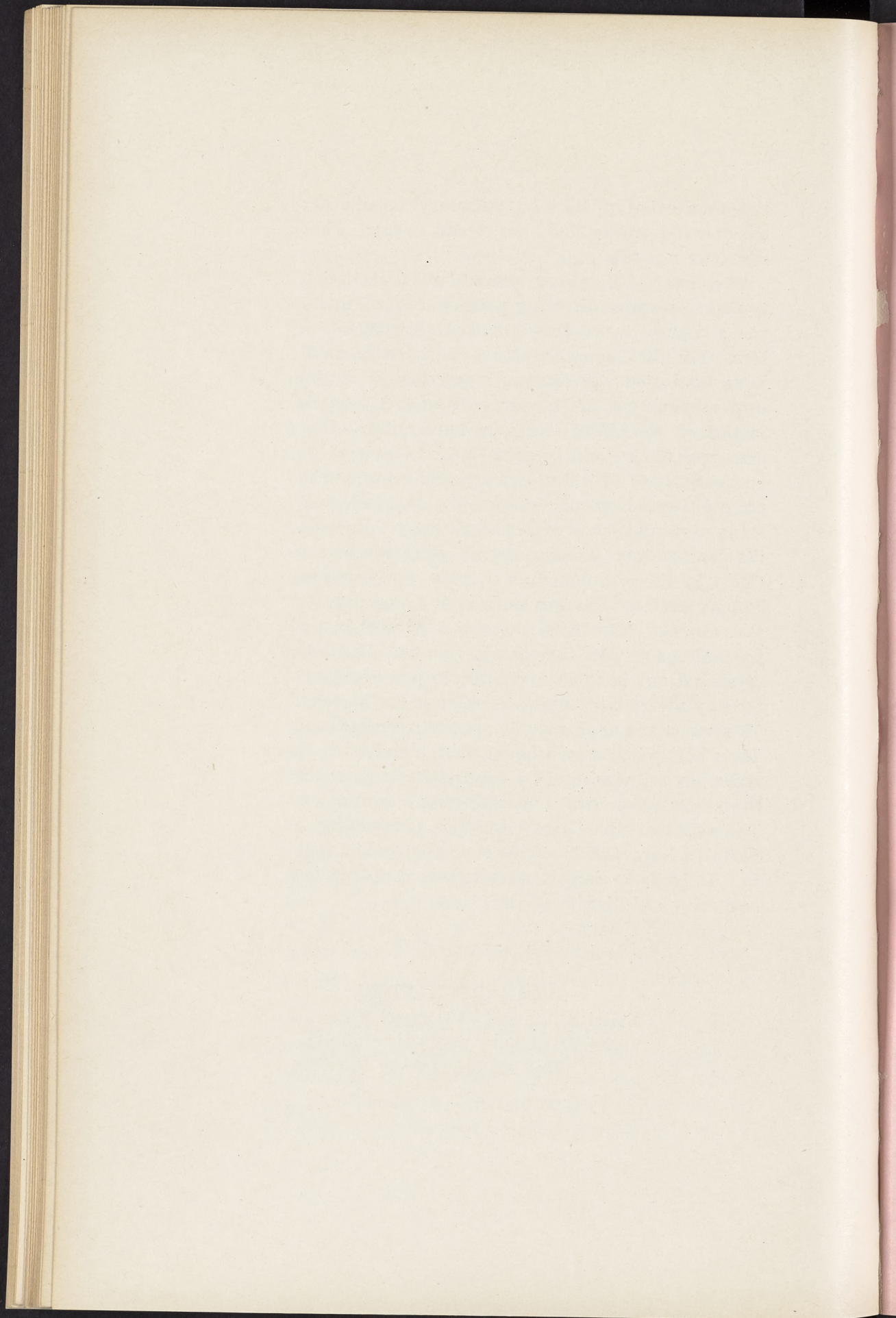
To the same effect is *In re Hayden*, 101 Eq. 361, "This case does not in any wise run counter to *O'Rourke vs. Cleveland*, 49 N. J. Eq. 577. That was exclusively a criminal contempt. Counsel fee could not be imposed at all in a contempt case in

the then existing state of statutory enactment; whether it can now, I do not intend to say. That case was not this case."

The Court of Chancery was without jurisdiction to make an order directing petitioner-appellant to pay a counsel fee of One Hundred (\$100.00) Dollars. For that, since the Court of Chancery could have instituted the contempt proceedings on its own motion; and if the proceedings had been so instituted, the Court could not have ordered that a counsel fee be paid by the Court of Chancery or by the State of New Jersey to the defendants, who purged themselves of the contempt. But in the instant case, and, as is generally in actual practice, the matter was brought to the attention of the Court by the complainant's counsel, who acted as *amicus curiae*. (*Staley vs. South Jersey Realty Co., supra*). The Petitioner was a witness in the proceedings as were the other witnesses. Petitioner should not have been ordered to pay a counsel fee any more than any other witness at the trial. This matter is analogous to criminal proceedings. The Court there would be without jurisdiction to order any witness to pay a counsel fee because the State was unsuccessful in obtaining a conviction. The effect of the Court's order is to penalize a State's witness; and as such is against public policy. It tends to punish one who would uphold the authority and dignity of the Court.

Respectfully submitted,

BERNARD MINDES,
Solicitor for and of Counsel with
the Petitioner-Appellant, Hudson
Hat Manufacturing Co., Inc.



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